

Balappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-10-2005

Reported in : 2005CriLJ2346; II(2005)DMC225; ILR2005KAR1093; 2005(2)KarLJ286

Judge : S.R. Bannurmath and ;A.C. Kabbin, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A

Appeal No. : Cr.A. No. 891/2002

Appellant : Balappa

Respondent : State of Karnataka

Advocate for Def. : P.M. Nawaz, HCGP

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Disposition : Appeal allowed

Judgement :

A.C. Kabbin, J.

1. This case is a classic example of tainted investigation affecting the major charge thereby weakening the charge and pushing it into a whirlpool of doubts generated by the contaminated investigation, ultimately resulting in drowning of

the charge of murder in that whirlpool of doubts.

2. The appellant herein, who was an accused before the learned I Addl. Sessions Judge, Belgaum, in S.C. No. 44/2001, has been convicted of offences of treating his wife Surekha with cruelty and ultimately committing her murder. For the offence of murder punishable under Section 302 of the IPC, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 3,000/- in default to undergo further imprisonment for six months, and for the offence punishable under Section 498-A of the IPC, he has been sentenced to undergo imprisonment for three years and to pay a fine of Rs. 1,000/- in default to undergo further imprisonment for three months. In this appeal he is challenging the judgment of conviction and sentence mainly on the ground that he has been framed for the offences, though he is innocent.

3. The prosecution story can be summed up as follows:

Surekha (the deceased) daughter of PWs 1 and 2 was married to the accused Balappa Sirai and both resided in Vantamuri village with Sri Hanamanth B. Shirai, father of the accused(PW-5). On 21.10.2000 at about 7.00 am the accused and Surekha left home with agricultural implements to go to their agricultural land. On their way to the land, they were seen by Maruti K. Rangannavar (PW-9) also. Around 8.00 a.m., the accused was seen going towards west hurriedly. His dress was stained with blood. That raised suspicion in the minds of PW7 Smt Lagamawwa and PW-24 Smt. Gangawwa who were working in a nearby land. They went to the land of the accused. There, they saw the dead body of Surekha amidst cotton crop. Surekha's throat had been slit and she had suffered extensive bleeding due to multiple injuries. On receipt of message, Hanamanth B. Shirai father of the accused went there, saw the dead body and sent CW 26 Lagumappa Naik to inform Surekha's parents Adivappa L. Gasti (PW-1) and Smt. Irawwa (PW-2). Both of them came and saw the dead body. PW-1 went to Kakati police station and gave orally his complaint which was recorded by PW-21 Sri Prabhakar B. Barki, P.S.I.(PW-21). In that complaint, PW-1 apart from referring to the ill-treatment to which his daughter Surekha had been subjected to by the appellant-accused, alleged that Surekha had been murdered by her husband Balappa

Hanamant Sirayi (the accused). On the basis of that complaint, a case was registered and F.I.R. was despatched. Further investigation was taken up by Sri Sripathi H. Gangareddy, C.P.I (PW-25). He found the accused unavailable in the village and according to the prosecution the accused was apprehended at 7 a.m. the next day i.e. 22.10.2000 at Ukkad by the P.S.I. It is alleged that after he was brought and produced before the C.P.I., his voluntary statement was recorded and in furtherance of such voluntary statement, sickle (M.O. 15) alleged used for murdering Surekha was recovered in hedges near the land of the accused. That was seized under mahazar. Extensive blood stains were found on the sickle. After completion of investigation, the Investigating officer placed a charge sheet against the accused for offences punishable under Sections 498-A and 302 of the I.P.C.

4. The accused pleaded not guilty to the charge. The prosecution examined in all 25 witnesses and closed its side. PWs 1 and 2 (parents of the deceased) Pw 3 Smt.Shobha (elder sister of the deceased) PW-4 Irappa P. Hatti (the husband of another sister of the deceased.) and PW 8 Balappa Gasti have been examined to speak about the harassment given by the appellant to Surekha. Though these witnesses were not aware of the real reason for harassment, the prosecution case is that the accused-appellant had suspected that Surekha had become too intimate with PW-17 Satappa and that was the reason for the appellant to often beat Surekha. PW 5 Hanamanth is the father of the accused. His and PW 10 Kempanna Tirugugol's depositions show that on that morning the accused and the deceased had gone with agricultural implements including M.O. 15 sickle to their land. Later PW 5 learnt about the murder of his daughter-in-law in the land, went there and found that Surekha had been murdered. Examination of PW 6 Kempanna was to show that an extra judicial confession had been made before him by the accused admitting that he had committed the murder of Surekha. But this witness has not supported the prosecution. Pw 7 Smt. Lagamawwa and PW 24 Smt. Gangawwa were working near the land of the accused on that day and according to them, the accused was seen running towards the west hurriedly on the morning of 21.10.2000. They noticed that his dress had been stained with blood. PW- 14 Dr. Jayashree, Senior Specialist; District Hospital, Belgaum conducted the post mortem examination on the dead body of Surekha and issued post mortem report. Ex.P12. PW- 15 Dr. Giridhar, Specialist, District Hospital,

Belgaum, was the Medical Officer who examined the accused at 11 P.M. on 22.10.2000 and found a small injury on the left thumb of the accused. PW 23 Ramesh K. Dolli was the panch for recovery of sickle on the information stated to have been furnished by the accused. PW 21 Prabhakar Barki P.S.I registered the case and later on the instruction of PW-25 arrested the accused the next day. PW-25 Sripati H. Gangareddy, C.P.I is the investigating officer.

5. After the case of the prosecution was closed, the accused was examined under Section 313 of Cr.P.C. to explain the circumstances arising out of the evidence. He denied the allegations of harassment to the deceased by him and the allegation that he had committed the murder of his wife. He took up a specific contention which can be stated as follows:

'On 21.10.2000 at 7 a.m. I along with my wife Surekha went to our land for the purpose of harvesting groundnut crop. On the way, I told Surekha to proceed further since I wanted to ease myself near the tree. 15-20 minutes thereafter I went to the land and found that my wife had fallen dead due to multiple injuries. In grief, I embraced her and cried for help, but nobody came. Due to that, my clothes were stained with blood. I did not know what to do and went to the police station and told the P.S.I. about the same. They detained me, secured my father-in-law Adivappa Gasti and foisted a false case. I do not know as to who had committed the murder of my wife Surekha. I am innocent.'

No witness was examined on behalf of the accused.

6. After hearing the prosecution and the accused, the learned Sessions Judge, taking into consideration circumstantial evidence particularly that of PW 7 and 24 came to the conclusion that it was the accused and the accused alone who could have murdered his wife Surekha. He also found that the allegation of cruel treatment to the deceased by the accused had been proved and in the result he convicted the accused for offences punishable under Sections 498-A and 302 of the I.P.C.

7. After hearing the prosecution and the accused, the learned Sessions Judge sentenced the accused to the punishment as stated above. The present appeal is

challenging the said judgment of conviction and sentence.

8. Sri R.B. Deshpande, learned Counsel for the appellant assails the judgment of conviction contending that the investigation has manipulated facts by projecting the appellant-accused as absconding though he had approached the police at the earliest opportunity regarding the murder of his wife Surekha by an unknown person. He argues that when the officer in charge of police station has failed to take the complaint of the appellant and investigate the matter to rule out the possibility of murder by some other person and introduced twisted facts, the whole case becomes suspicious. He urges that therefore the benefit of doubt should go to the appellant.

9. Replying to this argument, Sri P.M. Nawaz, learned High Court Govt Pleader submits that the circumstantial evidence, particularly the accused last seen together with deceased when alive and his leaving the place of offence hurriedly with his dress stained with blood, his non availability at the time of complaint and inquest, recovery of murder weapon on the voluntary information furnished by him completed chain of events pointing out the accusing finger only to the appellant as the assailant of Surekha. He submits that the judgment of conviction does not call for interference.

10. We have carefully gone through the evidence. So far as the charge that the appellant treated his wife Surekha with cruelty, the prosecution has adduced the evidence of four witnesses i.e. PWs 1 and 2, who are the parents of Surekha. PW3 sister of Surekha and PW-4, brother-in-law of Surekha. Their evidence and also the depositions of Surekha's uncle Balappa (PW-8) show that Surekha was treated harshly by the appellant and many times he beat her. That led PW-1 going twice to his son-in-law's place with Surekha for the purpose of advising the appellant to treat Surekha well. This aspect of evidence, though disputed by the appellant, does not suffer from any infirmity making us to disbelieve this part of evidence, so far as the charge relates to an offence punishable under Section 498-A of the I.P.C. We therefore are inclined to confirm the conviction of the appellant for the offence punishable under Section 498-A of the I.P.C.

11. That leaves the other charge i.e. the offence of murder. The motive for the murder as stated by the prosecution is that the appellant suspected Surekha for her close intimacy with a neighbour PW- 17 and though he had expressed his annoyance to Surekha on many occasions, she had not cared for his annoyance. There is no convincing evidence with regard to this allegation. However, that is not much material to decide the present appeal, since the decision on the charge is dependent on other materials.

12. The deposition of PW 5 Hanmanth B. Shirai, father of the appellant shows that on the morning of 21.10.2000, the appellant and Surekha left the house together with agricultural implements to the land. This is not disputed. PW- 10, Kempanna Tirugugol also had seen both the appellant and Surekha going to their land on that morning. Later, around 8.15 a.m. PW-7 Smt. Lagamawwa and PW-24 Smt. Gangawwa saw the appellant hurriedly going towards west. His dress was stained with blood. Though during trial, it was contended that PWs 7 and 24 had been introduced just to implicate the appellant, we do not find any infirmity in the evidence of these two witnesses to doubt the truthfulness of their testimony. In fact they are very natural witnesses having gone to the neighbouring land on that day to do coolie work. We also do not find any reason for them to speak a falsehood against the appellant. We, therefore, hold that these particular facts that appellant and his wife had gone to their land on that morning and a little later, the appellant alone went hurriedly and that his dress had been stained with blood have been proved by the prosecution.

13. The burden then shifts to the appellant to explain as to what happened in his land and how Surekha was murdered and by whom. The appellant has given explanation with regard to this in his explanation under Section 313 of the Cr.P.C. according to which before he and Surekha reached their land, he felt the urge to defecate and he sent Surekha ahead and went to the nearby stream. According to the defence, when he went to the land after about fifteen minutes, he found that Surekha had been murdered. He contends that in grief, he embraced Surekha resulting in his dress becoming stained with blood. The learned counsel for the appellant submits that this explanation fits into the events and when the appellant went to the police station and narrated the incident, the police, instead of recording

his complaint and investigating the matter, have framed the appellant on false charges.

14. Since the chain of events projected by the prosecution is almost complete, except with regard to the allegation that the appellant had left the land and had become unavailable till the next day, what remains to be considered is this claim of the prosecution about the non-availability of the appellant; For all other facts preceding to that event are proved and the fact that Surekha was murdered by a sickle is also not disputed by the appellant. Post mortem report Ex.P12 and the evidence of Dr. Jayashree Naik (PW- 14) conclusively show that Surekha died a homicidal death.

15. As to the claim of the prosecution that after murdering Surekha the appellant left the place and vanished only to be apprehended at 7.30 a.m the next day i.e on 22.10.2000, the prosecution relies on the evidence of the P.S.1, P.W-21 Prabhakar B. Barki. About the voluntary information stated to have been given by the appellant and consequent recovery of sickle (M.O. 15) in hedges near the land of the appellant, the prosecution has examined PW 25, Sripathi Gangireddy (I.O) and Sri Ramesh K. Dolli (PW-23). According to Sri R.B. Deshpande learned Counsel for the appellant, both these claims of the prosecution are concocted.

16. In support of that contention, he reads out para.6 of the deposition of Surekha's father Sri Adiveppa L. Gasti (PW1) in which Surekha's father says that when he went to the police station to lodge the complaint, the appellant was in the police station. Para 4 of the deposition of Surekha's mother Smt. Irawwa (PW 2) confirms the presence of the appellant at the land where the dead body of Surekha was removed from the land on 21.10-2000. PW 2 further states that the appellant was taken by the police to Belgaum, where the dead body was removed from the land to Belgaum on 21.10-2000. These hard facts nullify the story of the prosecution that the appellant was not available on 21.10.2000, despite search by the P.S.1 and that only on 22.10.2000, the P.S.1 brought and produced him. This further falsifies the theory of recovery of bloodstained sickle (M.O. 15) from the hedges near the land of the appellant.

17. There is another factor in prosecution evidence, which turns the prosecution case tipsy truly so far as its claim regarding recovery of bloodstained sickle is concerned. The evidence of PWs 1 and 2 confirms that sickle was by the side of the dead body on 21-10-2000, when the police visited the spot to conduct spot mahazar, they omit to mention that sickle and introduce it in the recovery mahazar. It is, therefore, clear that recovery mahazar is a got up document and has to be rejected outright.

18. These hard facts particularly the presence of the appellant in the police station, when PW 1 went there to lodge complaint, sickle found by the side of the dead body on 21-10-2000 having been removed from the spot only to introduce it in the hedges the next day in the alleged recovery mahazar, showing the appellant as absconding suspect all give an edge to the appellant creating doubt regarding the claim of the prosecution. In the absence of positive materials to indicate that it was the appellant and appellant only, who could have committed the murder of Surekha, all these tainted materials make the whole case of the prosecution about the appellant being the culprit suspicious and untrustworthy. The plea of the appellant that murder could have been committed by some other person, when he had stayed back to defecate, that his dress became stained with blood when he embraced Surekha, that he went to the police station to inform the police will have to be therefore accepted at its face value. Another factor creating doubt regarding prosecution case is the delay in sending the F.I.R. The complaint is stated to have been received at 1.00 p.m. on 22-10-2000. PW 18 Basavanni Sheregar P.C. 954 says that he received the complaint and F.I.R at 2.00 p.m. for the purpose of handing over the same to the Jurisdictional Magistrate. He has handed over the same at 7.25 pm. The distance between Kakati Police Station and the residence of the Magistrate is between 5 km or 6 km, and PW 18 went on a motor cycle. For the inordinate delay, explanation given by him is as under:-

'While I was coming from Kakati to the Belgaum on my cycle motor, the tyre was punctured near Yemanapura, then I took my vehicle near by mechanic and got corrected the punchure by about 3-00 p.m and I left that place and while coming towards Belgaum on the by-pass road, my motor cycle stopped due to mechanical defects. Then I took one mechanic at Kolhapur cross to that place who repaired

my vehicle by about 6.00 or 6.30 p.m. then leaving that place I reached the residence of Magistrate by 7.00 pm and submitted the F.I.R at 7.25 p.m to the incharge Magistrate.'

This explanation is hard to believe. The possibility of F.I.R having been prepared only after inquest mahazar appears probable,

19. To counter the claim of the accused/appellant that he is innocent, the learned High Court Government Pleader relies on two extra judicial confessions of the accused. The first is the so called history of injury furnished by the appellant to the medical officer PW 15 Giridhar. It is stated that the appellant stated that he sustained injury accidentally while assaulting his wife. There is no material to show that injury was fresh. Admittedly, the appellant used to beat Surekha. The possibility of such injury having been caused when he assaulted Surekha on earlier occasion can not be ruled out. The words 'sustained injury accidentally while assaulting his wife' stated to have been used by the accused/appellant do not necessarily mean that he admitted that injury was caused when he assaulted Surekha on 21-10-2000. Besides, as rightly pointed out this confession was admittedly when the appellant was in police custody and is not in admissible in evidence as it is hit by the provisions at Section 25 of the Evidence Act.

20. The second extra judicial confession is stated to have been made by the appellant before PW 6 Kempanna on 22-10-2000, at about 5.00 a.m before he was arrested by police at 1.00 pm on 22-10-2000. Not only PW 6 denies this, his statement recorded under Section 161 of Cr.P.C itself is a concocted document as the accused had already been taken to custody much earlier to 5.00 a.m on 22-10-2000.

21. We have seen in many matters that failure on the pan of the investigating officers to faithfully record the facts as they exist; and introducing many matters in their zeal to strengthen the case, weakens even a strong case against the accused. In criminal justice system, the responsibility of bringing the offenders to justice is on the State; and since the law does not permit the wronged person himself to retaliate to the wrong done to him or punish the offender, the responsibility of properly investigating the complaints is heavy on police officers.

Public interests requires that criminal justice should be swift and the prosecution is launched while the events are still fresh in the minds of the witnesses. It is therefore necessary that a police officer investigating a complaint of offence, does his job swiftly, sincerely and honestly, so that real culprits can be brought to justice and the innocent are absolved as early as possible. In many cases, we have found the investigation perfunctory or the prosecution saddled with tainted evidence, which makes the task of the Court difficult in sifting the evidence and coming to proper conclusion. Many a times this provides escape route to the offender from the clutches of law.

22. Chapter XXVIII of the Karnataka Police Manual contains detailed instructions to investigating officers, giving guidelines for proper investigation. If the police officers follow the guidelines faithfully and honestly, particularly in the matter of promptly sending the F.I.R. to the jurisdictional Magistrate, going to the spot and inspecting the spot of offence, minutely and observing the existing facts, drawing up spot mahazar noticed the facts noticed there, faithfully recording the statements of witnesses in their own words without loss of time, they go a long way in pinning the real culprit. It shall be borne in mind that tainted evidence introduced during investigation acts like a moth in wood ultimately destroying the core of the case resulting in the escape of real culprit. The Supreme Court has observed as far back as in 1974 in *JAMUNA CHOUDHARY v. STATE OF BIHAR*, : 1974 CriLJ890 that the duty of Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable to record a conviction, but to bring out the real unvarnished truth.

23. In the present case, the claim of the accused/ appellant that he sent Surekha ahead to the land saying that he had go to .a place near the stream to relieve himself has not been substantiated. Therefore, we had reservation about his subsequent claim that after he embraced his dead wife in grief, since nobody came hearing his cries, he went to the police station, not knowing what to do. It would have been more probable that he would have sought the assistance of persons in the neighbouring land. But the. facts twisted by the investigating agency have shrouded the evidence to such an extent that we find it difficult to confirm the conviction of the accused for the offence of murder. Though the

appellant had come to the police station on the morning of 21-10-2000, the P.S.1 and also the C.P.I have put up a false claim that he was not available. They make a drama of his arrest on the morning of 22-10-2000. Though the murder weapon M.O 15 sickle was by the side of dead body, the police remove it and keep it in a hedge and make a drama of recovery on the voluntary information furnished by the accused.

Though the accused was already in their custody on 21-10-2000, they prepare a statement of PW 6 recording therein that on the early morning of 22-10-2000, the accused went to PW 6's house and after confessing about the crime sought his protection. These concocted materials contaminated the whole case and rendered the prosecution claim untrustworthy. Besides, the police have not made any effort to rule out the possibility of any other person committing the crime. As held by the Supreme Court in *GAMBHIR v. STATE OF MAHARASHTRA*, : 1982 CriLJ1243 , the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and nonelse. In this case the concocted facts have contaminated the evidence to such an extent as to doubt the claim of the prosecution that it was the appellant who committed the murder of Surekha. Consequently, the benefit and doubt has to be given to him with regard to the charge of murder and he has to be acquitted for that offence.

24. In the result and for the reasons stated above, we allow the appeal and set aside the conviction of the accused for the offence punishable under Section 302 of the I.P.C. and consequent sentence and direct that he be set at liberty forthwith in respect of that offence. So far as the offence punishable under Section 498-A of the I.P.C., we confirm the conviction and consequent sentence imposed by the learned Sessions Judge on the accused- appellant. It is stated by the learned Counsel for the appellant that from the date of the incident i.e. 22.10.2000 the appellant-accused is in custody and that he has already served the sentence imposed for the offence punishable under Section 498-A of I.P.C. The Jail Authorities shall verify the matter and if the sentence has already been undergone, the accused-appellant shall be set at liberty forthwith unless his detention is required in some other case.

25. A copy of the judgment shall be forwarded to the Director General of police and Principal Secretary, Home Department for information and for issuance of necessary directions to Investigating Officers for prompt, swift and honest investigation.

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