

Sajid Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-21-1995

Reported in : 1996CriLJ1465; ILR1996KAR38; 1996(5)KarLJ781

Judge : M.B. Vishwanath and ;M.M. Mirdhe, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Cr. A. No. 95 of 1994

Appellant : Sajid

Respondent : State of Karnataka

Advocate for Def. : Mr. A.B. Patil, Addl. SPP,

Advocate for Pet/Ap. : Mr. Hashmath Pasha, Adv.

Judgement :

Mirdhe, J.

1. This appeal is preferred by the appellant who was the accused No. 1 in the trial Court against the Judgment dt. 31st January, 1994, passed by the XXII Addl. City Civil & Sessions Judge, Bangalore City, Bangalore, convicting the appellant of the offence punishable under S. 302 I.P.C. and sentencing him to R.I. for life.

2. We have heard the learned counsel for the appellant/accused Sri. Hashmath Pasha and the learned Addl. State Public Prosecutor Sri. A. B. Patil for the respondent/State and perused the records of the case fully.

3. The case of the prosecution is that the deceased Mohsina Taj was the legally wedded wife of the appellant and the PW-9 the mother of the deceased had given one suit, one gold ring, wrist watch and Rs. 3,000/- to the appellant prior to the marriage and after marriage the appellant and his wife Mohsina Taj lived happily for one year. Mohsina Taj complained to her mother and PW-14 her brother about the ill-treatment meted out to her by the appellant and his mother and the appellant also telling her that he would go in for a second marriage. On the date of the incident, the appellant came to the house of PW-9, he refused to take his food in his in-laws house and brought his wife to his house and asked her to prepare food. Mohsina Taj told him to wait for some time as she would prepare the food after changing her dress, but the appellant poured kerosene on her and set fire to her causing her injuries. The deceased cried out and neighbours came to her rescue and saw her in flames, they along with the appellant tried to extinguish the fire. The deceased also made dying declarations before various persons and subsequently she died in the hospital when she was under treatment. The police registered the case on the basis of Ex.P-6 which the prosecution claims to be the written dying declaration of the deceased. The police investigated into the case and after completion of the investigation, they filed charge sheet against the appellant.

4. The trial Court after assessment of the evidence placed by the prosecution before it, acquitted the mother of the appellant who was arrayed as accused No. 2 in the case. There is no appeal preferred by the State against the acquittal of the accused No. 2 the mother of the appellant for the offence punishable under Section 302 r/w Section 109 I.P.C. but the State contends in this appeal that the conviction of the appellant recorded by the trial Court and the sentence awarded to him is just and proper and in accordance with law. Now, it will have to be seen whether the trial Court's Judgment convicting the appellant of the offence punishable under S. 302 I.P.C. and sentencing him to R.I. for life is sustainable in law.

5. It is not disputed in this case that the deceased was the legally wedded wife of the appellant. It is also not disputed in this case that the deceased died a homicidal death. In view of the evidence of PW-6 who has deposed that he examined Mohsina Taj on 12-4-1992 at 10.45 p.m. when she was brought by her younger brother Noor and he noted the following injuries :

Head and neck 5%,

Trunk (front) 10%,

Trunk (back) 10%

Both the upper limbs 16%

Both the lower limbs 30%;

Total percentage of burns is 71%.

And in view of Ex.P-3 the Accident Register and Ex.P-4 the case sheet which corroborates his evidence and in view of the evidence of PW-10 who conducted the post-mortem examination and who has deposed that on 14-4-94 he conducted the post-mortem examination of the dead body of the deceased and found that there were burn injuries and the percentage of burn injuries were 60% and in view of his evidence that the cause of death of the deceased was due to the 60% burn injuries sustained by her, the prosecution has proved beyond reasonable doubt that the deceased died a homicidal death due to the burn injuries. The learned counsel for the appellant has submitted that the prosecution has failed to prove that the deceased died a homicidal death because according to him the deceased might have attempted to commit suicide by setting fire to herself. It is difficult to accept this argument of the counsel for the appellant because the evidence of PW-9 the mother of the deceased is clear on the point that on that night Mohsina Taj was in her mother's house and the appellant came and asked her to accompany him to his house and he even refused to take food in the house of PW-9. From the evidence that is led by the prosecution, especially the evidence of mother and the brother of the deceased, viz. PWs-9 & 14, it cannot be inferred that there were any such circumstances in the life of the deceased so as to make her disgusted with

life. The conduct of the deceased on that night in obeying her husband and accompanying him to house without taking food in her mother's house could not be the conduct of a desperate woman who was bent upon taking her own life. If the deceased had any such tendencies in her, she would not have accompanied the appellant to his house on his asking, without taking food in her mother's house. Therefore, the contention of the learned counsel for the appellant that the deceased might have committed suicide by setting fire to herself does not deserve to be accepted

6. In order to prove its contention that the appellant set fire to his wife Mohsina Taj the prosecution has relied upon the following pieces of evidence :

1. The strained relationship between the appellant and his wife Mohsina Taj;
2. The dying declaration Ex.P-6 alleged to have been made by the deceased before the police;
3. The dying declaration made by the deceased before PWs. 4, 5, 9, 14 & 16; &
4. The history of the case recorded by PW-6 under Ex.P-23(a).

There are no eye-witnesses to connect the appellant with the offence alleged against him. The prosecution is relying on circumstantial evidence to prove the guilt of the appellant. It is well settled principle of law that the guilt of an accused can be proved even on the basis of circumstantial evidence but law expects that the standard of circumstantial evidence for the conviction of an accused should be of such quality and standard so as to exclude all the reasonable hypothesis of the innocence of the accused. In other words, the circumstance relied upon by the prosecution must be consistent only within the guilt of the accused and not with his innocence. The trial Court has held that the circumstantial evidence relied upon by the prosecution comes to that standard and it has acted upon it and convicted the appellant. The prosecution relied on Ex.P6 as the dying declaration made by the deceased & recorded in writing by the police but the trial Court has not relied upon this dying declaration for the reason mentioned by it in its Judgment. After going through the evidence of the prosecution in respect of Ex.P-6, we think that the trial

Court was justified in not relying on Ex.P-6 as the prosecution evidence on Ex.P-6 suffers from many infirmities. Therefore, Ex.P-6 could not have been pressed into service by the prosecution in support of its case.

7. The next circumstance that is relied upon by the prosecution is that the deceased herself has made a statement before PW-6 the doctor who examined her first and she gave the history of the case as the burns caused to her by her husband. In Ex.P-23(a) it is mentioned that the history was given by the deceased and the history was to the effect that the appellant set fire to her. But unfortunately, the trial Court has not put this incriminating circumstance to the appellant while recording his statement under Section 313, Cr.P.C. In : 1984 CriLJ1738 Sharao Birdhichand Sarda v. State of Maharashtra the Supreme Court has held that the circumstances not put to the accused cannot be used against him. The learned Addl. P.P. submitted that this is not an independent circumstance by itself, but it is only a corroborative piece of evidence which corroborates other pieces of evidence led by the prosecution against the appellant. Giving the history of the case by the deceased herself to Medical Officer involving the appellant is a strong piece of circumstance. It cannot be considered merely as a corroborative piece of evidence when it has not been put to the accused in his statement under S. 313, Cr.P.C., that circumstance cannot be used against the accused. Therefore, we are not inclined to consider Ex.P-23 on the ground that it has not been put to the appellant under his statement under S. 313, Cr.P.C.

8. The next piece of circumstance that is relied upon by the prosecution against the appellant is the dying declaration alleged to have been made by the deceased before PWs. 9, 14 and 16. But this evidence of the prosecution will not be safe to be acted upon because the Investigating Officer who recorded the statements has admitted that the said witnesses have not told before him that the deceased made any dying declaration while he recorded their statements. Therefore, the evidence of PWs 9, 14 and 16 will not be safe to be acted upon as the evidence of the Investigating Officer discloses that they have made improvements and that too material improvements in their evidence by stating that the deceased made a declaration before them to the effect that it is the accused who set fire to her. Therefore, even the evidence of PWs 9, 14 and 16 to the effect that the deceased

made any dying declaration before them cannot be accepted.

9. The next circumstance that is relied upon by the prosecution is the strained relationship between the appellant and the deceased. On this point the evidence of PWs. 9 & 14 has been considered by the trial Court. They have stated that the relationship between the deceased Mohsina Taj and the appellant had become strained one year after their marriage and even the appellant was threatening the deceased to go in for a second marriage. Though the witnesses have been cross-examined on this point, no such material is elicited in their evidence so as to lead to an inference that this part of the evidence of these witness is got up or suffers from any such infirmities as to reject it. PWs-9 and 14 have not given any complaint about the ill-treatment meted out by the appellant to the deceased during her life time. But on that count their evidence cannot be rejected because no mother, father or brother of a woman would rush to the police station and give complaint against her husband because any such hasty act on their part will further deteriorate the relationship between the couple and perhaps the break up of the marriage will be beyond repairs. Every close relation of a woman would hesitate to take such steps and that too in the initial stages of marriage when the couple is settling down in life. Therefore, the conduct of PWs. 9 & 14 in not giving complaint to the police on account of the ill-treatment meted out to the deceased cannot be termed as unnatural or improbable. The evidence of these two witnesses proves beyond reasonable doubt that the relationship of the accused and Mohsina Taj had become strained. This is further corroborated by another circumstance which is spoken to by PW-9 in her evidence wherein she has stated that on that night her daughter Mohsina Taj was in her house, the accused came and took her away rejecting the request of PW-9 to have his dinner in her house. If the relationship of the accused with his wife and in-laws were to be smooth, there was no reason for the appellant to reject the request of his mother-in-law to have his dinner in her house. This conduct of the accused which is proved through the evidence of PW-9 proves beyond reasonable doubt that the things had reached to such a stage that the appellant was not even ready to concede the request of his mother-in-law to have his dinner in her house.

10. The next piece of circumstance that is relied upon by the prosecution is the dying declaration that is made by the deceased before PWs-4 and 5. From the evidence of PWs-4 & 5, it is crystal clear that they are the immediate neighbours of the house where the deceased was living with her husband the appellant. They are the natural witnesses. Nothing is elicited in their evidence so as to lead to the inference that these witnesses have got any motive to involve the appellant falsely in a case of this magnitude. Their evidence is to the effect that when they heard the cries of (Vernacular matter omitted) they rushed to the house of the appellant and they saw the deceased in flames and they extinguished the fire and the deceased told them that it is the appellant who set fire to her. A very important feature to be noted in the evidence of these two witnesses is that immediately on their coming to the spot, the deceased has told them as to who set fire to her. At that juncture, neither the mother of the deceased PW-9, nor her brother-PW-14, nor her brother's friend-PW-16, had come to the spot. They came to the spot much after this dying declaration. We are stressing on this point to note that there is no possibility of the deceased being tutored by any close relations at that time to involve the accused falsely. Therefore, the trial Court was justified in relying on the evidence of PWs-4 & 5 which goes to show that the deceased made her voluntary dying declaration before them to the effect that it is the appellant, who set fire to her and this dying declaration was made by her when there was no possibility of her being tutored by any of her close relations. Therefore, the fact that the deceased made such a dying declaration is proved beyond reasonable doubt from the evidence of PWs-4 & 5. According to the counsel for the appellant PWs-4 & 5 may not be the liars but it is the deceased who is a liar who made a dying declaration falsely involving her husband. In other words, the deceased wanted to have a last laugh at the cost of the appellant before she died and therefore, she involved him falsely by making a false declaration against him. We are unable to accept this argument also because of the circumstance leading to the setting of fire to the deceased. The deceased was not in the house of the appellant but she was in the house of her mother when the appellant came and brought her refusing the request of PW-9 to have his dinner in her house. The evidence also further discloses that on coming home, the appellant asked the deceased to prepare food and she told him to wait for some time as she would prepare the food after

changing her dress. From these circumstances, it is difficult to infer that the deceased had any motive against the appellant to involve him falsely in a case of this type. If the deceased had any grudge or any hatred in her heart against her husband the appellant, she would not have accompanied him meekly when he asked her to come to his house with him. Even after coming to the house, she has not disobeyed her husband but only asked him to wait for some time to prepare the food after changing her dress. Therefore, there is no circumstance to lead to the inference that the deceased was nurturing such hatred against the appellant as to involve him falsely in the case of her murder after setting fire to herself. On the other hand, the conduct of the appellant from the evidence of PW-9 goes to show that he thought that he was the master of the life and destiny of the deceased and so he ordered her to accompany him and even after coming home, he ordered her to cook the food immediately. The attitude of the accused proved by the prosecution case is the attitude of a feudal lord who thinks that he has got supreme power over the life of his wife. The evidence discloses that merely on the deceased asking the appellant to wait for some time for preparation of food, the appellant went to the extent of setting fire to the deceased. The counsel for the appellant also submitted that there is absolutely no motive for the commission of the murder of his wife by the appellant. It is not necessary that the case of the prosecution must succeed only on the proof of motive in each and every case. Sometimes, the motive will be lurking so deep in a person, that it will be difficult for prosecution to gauge and prove by evidence. How a particular person will act depends upon his mental make up, upon his education, upon his status in society, upon his capacity to control himself under provocative circumstances and his capacity to respond to certain provocations. Therefore, the argument of the counsel that there was no reason for the accused to commit the murder of his wife is also devoid of any merit because the relationship of the appellant with his wife had already become strained. The appellant had brought her from her mother's house without his taking food there. Against this background of the case, it is not unnatural or improbable that the deceased was set on fire by the appellant as she asked him to wait for some time, so that she could prepare the food after changing her clothes.

11. The counsel for the appellant further submitted that the case of the prosecution is not acceptable on the ground that the appellant himself has sustained injuries on his hand when he attempted to extinguish the fire in which the deceased was caught. The prosecution evidence discloses that the appellant sustained injuries on his hand. The evidence of PWs. 4 & 5 is also to the effect that the appellant tried to extinguish the fire. Counsel for the appellant relied on 1983 SCC (Cri) 325 : (1983 Cri LJ 426) State of Assam v. Mafizuddin Ahmed wherein the Supreme Court disbelieved the dying declaration on the ground of certain circumstances which also included that the accused in that case covered the burning body of the deceased with a quit and tried to extinguish the fire. He also relied on : 1990 CriLJ1462 State of Gujarat v. Mohanbhai Raghbhai Patel wherein also the Supreme Court held that the burning of a woman creates doubt because of the conduct of the accused throwing mattress over the deceased and also because of the absence of motive in that case. We have gone through those rulings. It is made clear in those two rulings that on the basis of the facts proved in those two cases, the Supreme Court has come to the conclusion that the conduct of the accused in those two cases in attempting to extinguish the fire on the body of the deceased was one of the grounds to disbelieve the dying declaration. But what the Hon'ble Supreme Court says on that the facts of a particular case cannot be held to be a law laid down by the Supreme Court. The Supreme Court on the interpretation of facts of those two cases has held that those circumstances in those two cases go in favour of the accused, whether any attempt on the part of an accused in extinguishing the fire in which the deceased was engulfed goes to the benefit of the accused is a question of fact and it will have to be decided on the basis of evidence led by the prosecution in that case. The fact of an accused trying to extinguish the fire on the person of the deceased may be on account of two reasons : one reason may be that the accused is really an innocent person and he is trying to save the life of that person by extinguishing the fire on his or her body. Another reason may be that the accused had become immediately repentant and he has attempted to control the damage that is caused by his act in setting fire to that person. To put it plainly such conduct could be the conduct of an innocent person or a repentant person. If a person after having set fire to another person realises immediately the magnitude of the damage caused by him to the life of that

person and out of repentance immediately tries to control that damage, it could not be the conduct of an innocent person but it could be the conduct of a repentant person. In view of the evidence of PWs. 4 & 5, we have no hesitation to come to the conclusion that after having set fire to the deceased, appellant realised the enormity of the act done by him and tried to control the damage caused by him, but it was too late by then. Therefore, we do not think in the facts and circumstances of this case, we can hold that the conduct of the accused in extinguishing the fire was the conduct of an innocent man. On the other hand, it was the conduct of a person who was trying to control the damage caused by him when it was too late for him to do so.

12. The prosecution has been able to prove in this case that the relationship between the appellant and the deceased was strained and on that fateful night the deceased was brought by the appellant from her mother's house after he refused the invitation of his mother-in-law to take food there and after coming to his house the appellant asked the deceased to prepare food and to which the deceased had asked him to wait for some time as she would prepare the food after changing her clothes and that made the appellant to set fire to the deceased. The dying declaration in this case made before two independent witnesses i.e. PWs-4 & 5 is natural & believable. A dying declaration can be made the basis of conviction without any further corroboration. The dying declaration made before PWs 4 & 5 by the deceased is enough and sufficient to prove the guilt of the appellant beyond reasonable doubt in this case. Hence, the trial Court was justified in convicting the appellant of the offence punishable under Section 302 I.P.C. and sentencing him to R.I. for life. We do not find any grounds to interfere with the Judgment challenged by the appellant in this case. Hence, the appeal is dismissed.

13. Appeal dismissed.