

Samual Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-09-1995

Reported in : 1996CriLJ1165; ILR1996KAR199; 1996(5)KarLJ246

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304 and 320; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 437 of 1993

Appellant : Samual

Respondent : State of Karnataka

Advocate for Def. : A.B. Patil, Addl. State Public Prosecutor

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

Judgement :

1. This criminal appeal is preferred by the appellant, who was the accused in the trial court against the judgment dated 29th September, 1993 passed by the II Additional Sessions Judge, Bangalore, convicting the appellant-accused for the offence punishable under Section 302 I.P.C. and sentencing him to R.I. for life.

2. We have heard the learned counsel for the appellant Sri Hashmath Pasha and the learned Additional State Public Prosecutor Sri A. B. Patil fully and perused the

records of the case.

3. The case of the prosecution is as follows :-

The appellant was working in United Precision Tools at Saitpalya, Lingarajapuram, Bangalore and was living in a small shed at Lakshmaiah Reddy Layout, in Sy. No. 66/2, Kacharakannahalli, Bangalore which was belonging to one Rasheed but managed by P.W. 4 who was the friend of Rasheed. On 2-6-91 the appellant married Bhagyamma who was the daughter of P.W. 5 Hanumanthappa by falsely representing that he belongs to 'Golla' community to which the deceased belonged, though in fact the appellant is a Christian. After marriage, he was living with his wife in the above said shed and was harassing her as her parents failed to give him silver leg-chain and wrist watch as promised at the time of marriage. After coming to know that the appellant belonged to some community other than her community, she developed a dislike for her husband-the appellant. On 15-8-1991 between 2.30 and 3.30 p.m. the appellant assaulted his wife Bhagyamma with a chopper M.O. 7 in that shed and murdered her. P.Ws. 3, 4 and 14 and others came near the shed on hearing the cries and P.W. 4 bolted the door from outside and went to the police station and informed the police. P.W. 13 came there and then the other bolt was removed and the accused was asked to open the door and he opened the door from inside, they went inside and saw the dead body of the deceased and the accused was also present there with the blood stained clothes and the blood stained macho. P.W. 4 gave the complaint and after investigation the police filed charge-sheet against the appellant. The trial court found the evidence led by the prosecution safe to rely upon and acting on that evidence, it has convicted the appellant for the offence punishable under section 302 IPC and sentenced him to R.I. for life.

4. The contention of the learned counsel for the appellant is that the trial court has not taken into consideration the circumstances in the evidence of the prosecution case which lead to the inference that the deceased might have given a grave and sudden provocation to the appellant and therefore the appellant assaulted her. The submission of the learned counsel for the appellant is that the evidence will not bring the offence against the appellant under section 302 IPC, but at the most

the offence against the appellant will be under section 304 Part I of the IPC. The learned Additional State Public Prosecutor submits that the grave and sudden provocation given to an accused person must be both grave and sudden and whether in a particular case any grave and sudden provocation was given by the deceased is a question of fact and in this case there is no material to lead to the inference that the deceased gave any grave and sudden provocation to the appellant so as to make him to assault the deceased and cause her injuries resulting in her death. The learned Additional State Public Prosecutor submits that there are no grounds to interfere with the judgment of the trial court which is properly based on the evidence led by the prosecution.

5. The case of the prosecution is based on circumstantial evidence. There are no eye witnesses in the case. The prosecution is relying on circumstantial evidence. When the case of the prosecution is based on circumstantial evidence, the circumstances alleged by the prosecution must come up to a particular standard, if the circumstantial evidence is to be acted upon by the Court for convicting an accused. Time and time again the Supreme Court has reiterated principles for the assessment of circumstantial evidence in criminal cases. The gist of the rule laid down by the Supreme Court for the appreciation of the circumstantial evidence is that the circumstances alleged against the accused must be proved beyond reasonable doubt and the chain of circumstances must be so closely knit so as to exclude all the reasonable hypothesis of the innocence of the accused. The circumstances proved against the accused must be consistent only with his guilt and should point towards the guilt of the accused. If the circumstantial evidence also rules out the possibility of innocence of the accused, then the Court will be justified in convicting the accused on the basis of such evidence.

6. The circumstances which the prosecution has relied upon and has proved against the appellant in this case are as follows :-

- 1) That the deceased was the legally wedded wife of the appellant and both the appellant and the deceased were living in the shed belonging to one Rasheed but managed by P.W. 4-his friend;

- 2) That the deceased and the appellant were found in that shed which was chained from outside by the prosecution witness P.W. 4.
- 3) That P.W. 3 and P.W. 4 heard quarrelling voices and also the weeping voice of the deceased coming from that shed and after some time the voices stopped and there was a silence;
- 4) When P.Ws. 3, 4 and 14 found the dead body of the deceased and that the deceased was having bleeding injuries on her body in that shed and the chain of that shed from inside was opened by the appellant and his clothes were blood stained and there was a blood stained chopper lying by the side of the dead body in that shed;
- 5) The deceased died a homicidal death;
- 6) The shirt and lungi M.Os. 10 and 11 were stained with 'B' Group blood which was the blood group of the deceased.
7. It is the case of the prosecution that the deceased was the legally wedded wife of the appellant and they were living together in the shed which was of the ownership of one Rasheed but managed by his friend P.W. 4., P.W. 5 Hanumanthappa is the father of the deceased. He has deposed that his daughter was married to the appellant about more than two years prior to the incident. A suggestion is made to this witness that the deceased was not married to the appellant. Even in his statement under section 313 Cr.P.C. the appellant has stated that the deceased was not married to him. But, it is difficult to accept this contention of the appellant in view of the evidence of P.W. 5 who had no reason to come and depose falsely in this behalf. The fact of appellant and deceased living together in the shed let out to the appellant by P.W. 4 is another circumstance which corroborates the evidence of P.W. 5 that the deceased was married to the appellant. The evidence of P.Ws. 6 and 7 also proves that the deceased was married to the appellant. P.W. 4 has deposed that in the first instance the appellant had taken the shed on rent and he left it after some time and again on second occasion he took the same shed and he was residing there with the deceased. P.W. 4 has stated that the said shed belongs to one Rasheed, who is

no more and who was his friend and he had let out that shed to the appellant as he was managing his property on his behalf. This evidence proves that the deceased and the appellant were living together as husband and wife in that shed. This circumstance is proved beyond reasonable doubt against the appellant. The conduct of the appellant in denying his marriage with the deceased is a relevant fact to be taken into consideration to see whether the relationship between the appellant and the deceased was strained. This denial is a ground to infer that all was not well with that marriage. Otherwise, the appellant could not have been denying his marriage with the deceased.

8. The next circumstance that is alleged by the prosecution against the appellant is that on 15-8-91 between 2.30 and 3.30 p.m. the appellant and the deceased were together in that shed which was chained from inside. P.W. 3 has given evidence in this regard. P.W. 3 is a natural witness. There is no motive on the part of P.W. 3 to give a false evidence. According to P.W. 3, on that day he was standing in the compound of his house and he heard that quarrelling noise between the appellant and his wife and he found the house was bolted from inside and there were 3 or 4 persons who were ladies near that house and they were telling that the husband was assaulting the deceased and after some time they found the sound stopped and then he went and informed P.W. 4. P.W. 4 has stated that P.W. 3 came and informed him that he heard a fight from that house and he went to that house and knocked the door. But the appellant did not open the door. He pulled the window shutter with the glass which was broken and he saw the appellant inside the house and the body of the deceased lying there. He has also deposed that he bolted the door from outside and asked P.W. 3 to stay there, went to the police station and gave his complaint as per Ex.P-4. P.W. 13 is the P.S.I. who recorded the complaint of P.W. 4. P.W. 14 has deposed that on that day she heard the shouting of the wife of the appellant from the house of the appellant. The doors and windows of that house were closed. She went and knocked the door and asked them not to quarrel and when the door was not opened she asked P.W. 3 intervene in that quarrel. P.W. 3 knocked at the door but it was not opened and therefore he went and informed the owner of the house P.W. 4. P.W. 13 is the P.S.I. who has deposed that on 15-8-91 he received the information in this case. He left to Banaswadi police station, collected the copy of the F.I.R. and along with

the panchas he went to the house which was found bolted from inside. The appellant was inside the house and he asked the appellant to open the door and he opened the door. P.Ws. 3 and 14 are the natural witnesses as they are the persons whose houses were situated in the vicinity of the shed where the appellant was staying with his wife. P.W. 4 is also a natural witness because he was the landlord of the shed let out to the appellant and it was but natural for P.W. 3 to inform P.W. 4 and P.W. 4 to come and find out what the matter was. The evidence of these three witnesses further corroborated by the averments in Ex.P. 1 the complaint and also the evidence of P.W. 13. The evidence of all these witnesses clearly proves that on that day at that time the deceased was alive in that room. The appellant was with her and for some time quarrelling voices were heard and these voices stopped and there was silence and when the P.W. 4 saw through the broken window he saw the appellant in the shed and the body of the deceased lying on the floor. This circumstance is also proved beyond reasonable doubt against the appellant.

9. The evidence of P.Ws. 3 and 14 further shows that they heard the voices of quarrel between the accused and the deceased and after some time the voices stopped. As noted by us earlier above, these witnesses are natural witnesses because their houses are situated in the near vicinity of the house or the shed where the accused and the deceased were living. Their evidence shows that at that time there was some quarrel going on between the accused and the deceased and after some time the voices stopped and there was silence in that shed.

10. The next circumstances that is alleged by the prosecution is that after seeing the accused in the shed and the body of the deceased lying on the floor of that room. P.W. 4 bolted the door from outside and went and informed the police. The evidence of P.W. 13 is that he came along with P.W. 4 and he also found that the accused was inside the room which was bolted from inside and he asked the accused to open the door and the accused opened the door and when they went inside they saw the deceased lying on the floor with bleeding injuries on the person, the appellant with his blood stained clothes and the blood stained chopper near the dead body. This circumstance also stands proved beyond reasonable

doubt by the evidence of these witnesses.

11. The dead body of the deceased was subjected to p.m. examination and P.W. 9 has deposed that he conducted the p.m. examination and he noticed 18 external injuries and also some internal injuries and all the injuries are anti-mortem and fresh in nature. P.W. 9 has also opined that the death was due to shock and haemorrhage as a result of chop injuries sustained by her. He has also opined that the injuries could be caused by the macho M.O. 7. He has given his report as per Ex.P-7 and his opinion as per Ex.P-7 (a). These pieces of evidence prove beyond reasonable doubt that the deceased died a homicidal death.

12. The next circumstance that is proved against the appellant is that his shirt M.O. 10 and his lungi M.O. 11 were stained with B-group blood which was the blood group of the deceased Bhagyamma. Ex.P-15 is the Chemical Examiner's Report and Ex.P. 17 is Serologist Report and both these reports prove that the chopper M.O. 7 some of the clothes of the deceased, and shirt M.O. 10 and the lungi M.O. 11 which were on the person of the accused and which were seized by the police from his person were all stained with B-group blood. These reports prove beyond reasonable doubt that the clothes of the accused which were seized from his person were stained with the same blood group as that of the deceased. All these circumstances which have been proved by the prosecution beyond reasonable doubt against the appellant are consistent only with the guilt of the appellant and they form an unbroken chain of circumstances so as to exclude all the reasonable hypothesis of the innocence of the appellant. On the basis of these pieces of evidence the prosecution has been able to prove beyond reasonable doubt that it is the appellant who assaulted the deceased in that shed on that day with M.O. 7 and caused her injuries which resulted in her homicidal death.

13. The learned counsel for the appellant has also not seriously disputed the complicity of the appellant in the assault. But according to him, the appellant had no intention to commit the murder of the deceased and he acted on the grave and sudden provocation given by the deceased and thus the offence that would be held to be proved against him will be not under section 302 IPC but under part I of Section 304 IPC. He relied on : 1989 CriLJ883 (Surinder Kumar v. Union Territory,

Chandigarh) wherein the Hon'ble Supreme Court has laid down as follows :-

'Penal Code (1860), Ss. 300, Exception 4, 304 Part I. Murder-Sudden quarrel-Accused causing injuries to deceased-In the facts accused, could not be said to have acted in a cruel manner-Entitled to benefit of Exception 4 to S. 300 - Can be convicted under S. 304, Part I.'

He has also relied on 1977 (2) Kar LJ412 : (1978 Cri LJ 290) (State of Karnataka v. Kamalaksha) wherein this Court has held that where the accused causes the death of another person on being provoked by filthy abuses such act can come under exception to S. 300 IPC. Exception to Section 300 IPC deals with a situation where a person commits homicidal death of another under grave and sudden provocation offered by that person. Law is to the effect that such a homicidal death will not amount to murder if it is committed on grave and sudden provocation given by the deceased and the question of grave and sudden provocation is a question of fact and it will have to be decided on the basis of the evidence that will be led in that particular case. It is also to be noted that the act must be not only grave but also sudden. If either of these elements - gravity or suddenness is missing in that provocation, then the act cannot come within that Exception to Section 300 IPC. There is also limitation to the act of the accused in acting on grave and sudden provocation is required not to act cruelly or take disadvantage of the situation. Now, it will have to be seen as to whether the contention of the learned counsel for the appellant that the appellant acted on grave and sudden provocation. The learned counsel for the appellant referred from the evidence of P.W. 8 wherein P.W. 8 has said that the deceased and the accused had come to their house on the previous night to watch the T.V. This circumstance goes more in favour of the prosecution than in favour of the appellant. It goes to show that the deceased had no such intention so as to give any provocation to her husband on the next day leading to the assault on her by the appellant. P.W. 8's evidence also shows that the appellant took M.O. 7 for cutting the fuel from P.W. 8. From the evidence it is disclosed that it is this weapon that was used by the appellant in assaulting the deceased. P. W. 3 has stated that when he went near the house of the appellant it was bolted from inside; there were 3 or 4 persons near the house and they were saying that the husband of the deceased was assaulting her and the ladies said

the he had done something. P.W. 14 is another witness. She has sated that on hearing the noise she went near the door of the room of the (sic) and asked them not to quarrel and she has also stated that though P.W. 3 knocked the door it was not open. Then she went and reported the matter to the owner of the room. It is elicited in the cross-examination of P.W. 3 that she heard the weeping sound or the deceased. From the evidence of these witnesses it is clear that some quarrel was going on between the appellant and the deceased at that time. But the evidence of P.W. 3 also discloses that the ladies who assembled were telling that the appellant was assaulting the deceased. P.W. 3 has also heard the weeping sound or the deceased. The door was bolted from inside. In spite of P.W. 3 knocking on the door, the appellant did not open the door. There is no material any where for us to infer that the deceased gave any such grave and sudden provocation so as to make the appellant assault her with macho and that too 18 times as it is evident from the injuries sustained by the deceased. Even in spite of the knocking on the door by P.W. 3 and request of P.W. 14 not to quarrel, the appellant did not stop in his assault. These circumstances which are proved beyond reasonable doubt in this case clearly rule out any possibility of the appellant acting on grave and sudden provocation given to him by the deceased. Therefore, we are of the view which we have formed on the basis of the assessment of the evidence on record that the act of the appellant-accused bring the offence committed by him squarely within the four corners of Section 320 IPC as he has committed the homicidal death of the deceased without any grave and sudden provocation offered by the deceased. The trial court was justified in convicting the accused and sentencing him to R.I. for life. We do not find any circumstances to interfere with the judgment of the trial court. Hence, we proceed to pass the following order :-

The appeal is dismissed confirming the order of conviction and sentence passed by the trial court.

14. Appeal dismissed.