

Yallappa Vs. the State of Karnataka Rep. by State P.O.

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Court : Karnataka

Decided On : Jun-13-2008

Reported in : ILR2008KAR3207; 2008(5)KarLJ469

Judge : K. Sreedhar Rao and; A.S. Pachhapure, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 354, 448 and 511; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Petition No. 2351/2005

Appellant : Yallappa

Respondent : The State of Karnataka Rep. by State P.O.

Advocate for Def. : G. Bhavani Singh, SPP-II

Advocate for Pet/Ap. : Somashekar Angadi, Adv. and; Amicus Curiae

Disposition : Appeal dismissed

Judgement :

A.S. Pachhapure, J.

1. The appellant has challenged his conviction and sentence for the offence under Sections 302, 448, 354 read with 511 of IPC on a trial held by the Sessions Judge, Dharwad.

2. Sans unnecessary details, the prosecution version unfolded during the trial is as under:

PW.6 Shivanand, the husband of the deceased Susheela is a resident of Inchal, Taluk Saudatti and was residing in a rented house owned by Hanamawwa (PW.13). He was a supplier in a hotel and as usual on 12.7.2004 in the morning at about 5.30 a.m., he went to the hotel for his work and his wife Susheela was alone in the house. At about 6.00 p.m., when he was working in the hotel, Shankrawwa (PW.21), the mother of the accused informed on phone to come home urgently and accordingly, Shivanand (PW.6) went to his house and when he tapped the door of his house, his wife Susheela did not open the door and therefore, Hanamawwa (PW.13) and Shivanand (PW.6) went towards the back side and found that the back door was opened. When he entered the kitchen, he found his wife lying dead. There was bleeding from the nose and he having been scared, informed his parents about this incident on phone and asked his father Shivayya (PW.7) to come along with father of the deceased. After the arrival of his father Shivayya (PW.7) and father-in-law (PW. 11), he went to the Police Station in the night at 00.30 hours and submitted his complaint (Ex.P.9) regarding the unnatural death of his wife, with a request to enquire into the same. The ASI (PW.26) received the complaint (Ex.P.9) from Shivanand and registered UDR Crime No. 18/2004 and sent a requisition to the Taluka Executive Magistrate (PW. 14) to hold the inquest on the dead body. On 13.7.2004 at about 6.00 a.m., the PSI (PW.4) visited the scene of occurrence and noticed that there was a ligature mark on the neck and few hairs were found near the left hand of the deceased. Further, there were finger prints on the door of the kitchen and therefore, the PSI (PW.4) sent a requisition for the dog squad and a request to the finger print experts to visit the house. The sniffer dog, after sniffing the dead body went to the house of the accused. The finger print experts arrived at the spot and took the finger prints available on the back door and other places in the house. A photographer (PW.25) was also secured and the photographs of the dead body were obtained as per Exs.P.6 and P.7. The spot mahazar was held and the six hairs in the left hand of the deceased were seized under the mahazar Ex.P.4. After the inquest (Ex.P.1) in the presence of PW.1 and others, the dead body was entrusted for postmortem examination. The statements of the witnesses were recorded and on 13.7.2004,

the clothes on the body of the deceased (MOs. 1 to 4) were seized under the mahazar Ex.P.5. He secured the inquest report and on 16.8.2004, he received the postmortem report (Ex.P.13). The Doctor had opined that the death was due to asphyxia as a result of throttling. He registered suo motu the Crime No. 179/2004 for the offence under Sections 448 and 302 IPC. He sent the complaint (Ex.P.2) and the FIR (Ex.P.3) to the Magistrate through PW.16. The CPI (PW.28) recorded the additional statement of PW.6 which revealed that the accused was teasing the deceased earlier to the incident. He arrested the accused on suspicion on 17.8.2004. On interrogation, he recorded the voluntary statement of the accused as per Ex. P.26. After securing PWs.10 and 23, he seized the 8 scalp hairs of the accused under Ex. P.11. He recorded the statement of other witnesses and sent the seized hairs to the forensic laboratory and got prepared the sketch of the scene of occurrence (Ex. P.15) through the Assistant Engineer (PW.15). He obtained the sample finger prints of the accused for comparison with the finger prints obtained on the back door of the house of the deceased and sent them to the finger print experts. On 9.9.2004, he received the report from the Inspector, Finger Print Bureau (Ex. P.20) and also obtained the opinion of the Medical Officer (Ex. P.14). On completion of the investigation, he filed the charge sheet against the accused. Later he received the FSL report (Ex. P.27) and produced the same before the Court.

3. During the trial, the prosecution led the evidence by examining PWs. 1 to 28 and in their evidence got marked Exs. P.1 to P.27 and MOs. 1 to 5. The statement of the accused was recorded under Section 313 Cr.P.C. He has taken the defence of total denial and has not led any defence evidence. The Trial Court on appreciation of the material on record, convicted the appellant for the offence under Sections 302, 448, 354 read with 511 IPC and ordered him to undergo imprisonment for life and other sentences of imprisonment and payment of fine. Aggrieved by the conviction and sentence, the appellant/accused has approached this Court in appeal.

4. We have heard the learned Amicus Curiae for the appellant and also the State Public Prosecutor. The points that arise for our consideration are:

(1) Whether the judgment and order of conviction of the appellant for the offence under Sections 302, 448, 354 read with 511 IPC is illegal and perverse?

(2) What order?

5. It is the contention of the learned Amicus Curiae for the appellant that there are no circumstances to prove the complicity of the appellant in the crime and that the opinion of the finger print experts and the forensic experts itself cannot be a base for conviction. It is his further contention that the appellant has been falsely implicated by the investigating agency as the real assailant was not known to them. On these grounds, he has sought for setting aside the conviction. The learned State Public Prosecutor submits that there are strong circumstances to prove the complicity of the appellant and that the Trial Court has taken a right decision in convicting the appellant. He also submits that the appellant has not made out grounds to warrant interference in the appeal.

6. So far as the homicidal death is concerned, there is no serious dispute. The prosecution to prove the homicidal death relies upon the evidence of PW.1 the attesting witness for the inquest (Ex. P. 1), the evidence of the Taluka Executive Magistrate (PW.14), who held the inquest in the presence of PWs. 1, 5 and CW.7 and also the evidence of the Doctor (PW.18) and the postmortem report (Ex. P.13). The perusal of the postmortem report (Ex. P.13) reveals that there were two lunar shaped injuries present below the right ear measuring 1.5 cm x 0.5 mm. and 2 x 0.5 cms respectively. There were nail scratches present over the right side of the neck and below the left ear. On dissection of the dead body, he has noticed that the brain and lungs were congested and the Doctor is of the opinion that death is due to asphyxia as a result of throttling (manual strangulation). He is of the opinion that the nail scratches were by the human finger nails. He has also issued the report (Ex. P.14). The perusal of the cross examination reveals no such circumstance to discard the opinion of the Doctor and the only suggestion that has been made is that the injuries could be caused, if a person falls to the ground from a height. The fact that the death was due to asphyxia as a result of throttling would itself indicate the homicidal death. The dead body was found in the house of the deceased in the kitchen and the back door of the house was opened. So this

circumstance would indicate the homicidal death and the possibility of a person, having entered to the house from the back door and having caused the death of the deceased. Hence, we are of the opinion that the death of the deceased was homicidal.

7. Neither the husband of the deceased nor the other relatives were aware as to the circumstances in which the death had occurred and when they saw the dead body, they did not anticipate anything and went to the Police Station and submitted the report regarding the unnatural death. It is only after the receipt of the postmortem report (Ex. P.13) that the Police suspected the homicidal death and as it was confirmed by the Doctor that the death was due to asphyxia as a result of throttling (manual strangulation), he registered the complaint and thereafter, recorded the additional statement of PW.6. It is at this juncture, that for the first time, PW.6 stated about the conduct of the accused and his teasing the deceased earlier to the death. PW.6 had noticed the teasing and was also informed by the deceased herself about the teasing by the accused in the absence of the other members in the family and the mere fact that this circumstance was not disclosed by PW.6, while submitting his complaint (Ex. P.9) in our opinion is not such a serious circumstance to discard the evidence of PW.6. When a dead body is noticed by any person, immediately may not know the exact cause for the death and he cannot anticipate the possibility of the accused causing the death only for the reason that he was teasing the deceased. Therefore, the absence of the recital of this fact by PW.6 in the report, i.e., the teasing of the deceased by the accused is itself not a sufficient ground to discard the evidence of PW.6. PW.7 the father of PW.6 also states having informed about the teasing of the deceased by the accused through his son (PW.6).

It is relevant to note that the house of accused is in front of the house of deceased and even taking into consideration the age of the accused and the deceased, the evidence of PW.6 stands corroborated by the evidence of PWs.7 and 11 (father-in-law and father of the deceased), who after coming to know of the teasing, had, advised PW.6 to change the house. In the circumstances, we are of the opinion that this material brought on record is a strong circumstance to support the version of the prosecution and regarding the complicity of the accused in the homicidal

death of the deceased.

8. It is relevant to note that during the inquest, the Taluka Executive Magistrate (PW. 14) had found the hairs in the left hand of the deceased. These hairs (MO.5) were seized by the Investigating Officer under Ex. P.4 in the presence of PWs.8 and 9. These hairs were sent for the opinion of the experts along with the eight scalp hairs of the accused, which were seized by the Police under Ex. P.11 and the perusal of the report Ex.P.27 reveals that both the hairs are human hairs and macroscopically and microscopically they show similar characteristic features. Hence, in our considered opinion, this circumstance is the strongest circumstance to prove the complicity of the accused in the crime. The fact that the accused was teasing the deceased and he could have misused the occasion of the absence of PW.6 in the house and by gaining an entry into the house through the back door, appears to have tried to commit rape and when the deceased was not willing, he throttled the deceased and caused her death. In the course, there could have been the nail scratches over the neck and below the ear. The above circumstances support the version of the prosecution and form a strong chain to connect the accused with the crime.

9. Apart from the circumstances stated above, the other strongest circumstance brought on record by the prosecution is as regards the finger prints. PW.27 is the Police Inspector and a Finger Print Expert, who has the experience since 26 years and he had visited the scene of occurrence on 13.7.2004 and found the fingerprints on the steel lota and two finger prints on the back door of the house of the deceased. The finger prints on the back door were marked as Q1 and Q2 and the finger prints of the accused obtained after his arrest were marked as S1. On comparison of Q1 and S1, he found that the finger prints on the back door marked as Q1 was identical with the specimen right middle finger print of the accused marked as S1. He has issued the certificate Ex. P.20 and also his opinion Ex. P.21 and he has given the reasons and the similarities to arrive at the conclusion as per Ex. P.23. He has examined the finger prints after taking the enlarged photographs and has come to the conclusion that the thumb impression at Q1 and S1 are of the accused and accused alone. In the cross examination except suggesting that he is deposing falsely does not reveal any circumstance to discard the evidence of the

expert. The scrutiny of the evidence of PW.27 reveals the strongest circumstance about the presence of the accused in the house by gaining an entry through the back door. So the homicidal death of the deceased, the teasing act of the accused, the similarity of features in the hairs found in the hand of the deceased and the scalp hairs of the accused, the identical fingerprints on the back door of the house of the deceased and die nail scratches on the body of the deceased, in our considered opinion are sufficient to prove the chain of circumstances, which are consistent with the complicity of the accused in the crime and are inconsistency with his innocence.

10. It is relevant to note that on the date of the incident in the morning, the husband of the deceased (PW.6) left the house and as usual, he used to return in the night, but only after the phone message from PW. 13 and the mother of the accused (PW.21), he came to the house and found his wife lying dead. Though the prosecution has examined the mother and brother of die accused (PWs. 21 and 22 respectively), as regards die extra judicial confession, the witnesses have turned hostile and therefore, the said circumstance has not been proved. Despite the fact that they are the hostile witnesses, the circumstances stated supra are sufficient in our opinion to prove the guilt of the accused beyond reasonable doubt. The Trial Court, after considering the circumstances has come to a right conclusion and we do not find any such ground to warrant the interference. Hence, we answer Point No. I in the negative and proceed to pass the following:

ORDER

The appeal is dismissed. The conviction and sentence of the appellant for the offence under Sections 448, 302, 354 read with 511 IPC stands confirmed.

11. Sri. Somashekar Angadi, learned Amicus Curiae, assisted the Court for the appellant. His fee is fixed at Rs. 5,000/-. The fee of the Amicus Curiae shall be paid by the State.