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Court : Karnataka

Decided On : Mar-26-2008

Reported in : 2008CriLJ3329; ILR2008KAR3381

Judge : R.B. Naik, J.

Acts : Indian Penal Code (IPC) - Sections 34, 149, 177, 201 and 302

Appeal No. : Criminal Revision Petition No. 1143/2005

Appellant : Anitha

Respondent : The State of Karnataka Represented by the Circle Police Inspector and ors.

Advocate for Def. : Honnappa, HCGP for R1,; A.K. Vasanth and; M.K. Girish, Adv. for R2 to R5 and; T.A. Karumbaiah, Adv. for R6 and R7

Advocate for Pet/Ap. : B.V. Pinto, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.B. Naik, J.

1. This Revision Petition is by the wife of the deceased Suresh who is claimed to have been killed by accused Nos. 1 to 3 and thereafter with the assistance of accused Nos. 5 and 6 who are the neighbouring villagers. They screened away the material evidence and as such they were also implicated. The allegations are also made against accused No. 4. He was implicated in the case for the offences punishable under Section 302 IPC. the said petitioners are acquitted of the charge of an offence punishable under Sections 302, 177, 201 read with 149 IPC, by judgment dated 13.4.2005 passed by the District and Sessions Judge, Kodagu, Madikeri, in SC No. 13/1997.

2. The case of the prosecution is that the deceased Suresh, the husband of the petitioner herein was the brother of accused No. 4 and accused No. 2 is wife of accused No. 4. Accused Nos. 1 and 3 are the son and daughter of accused Nos. 2 to 4 respectively. Accused No. 4 being elder in the family was managing the family properties. The deceased Suresh, his wife and children were making a living in Bangalore. As he could not augment sufficient income for making his livelihood, he returned back to the village and started to make his living with accused No. 4 his elder brother. However, he was demanding his share of the property, which was being postponed on one pretext or the other. That on 12.5.1996, Suresh the husband of the petitioner had gone to a Betrothal ceremony in the morning. He returned late in the evening at about 7.00 or 7.30 P.M. He was found drunk. PW.3, who is none other than the mother of accused No. 4 and deceased Suresh was searching for dinner plates for the servants. As they were not found, she shouted at accused No. 2 and asked her as to where she had kept the plates. In response, accused No. 2 shouted and stated that she should search for the same and she may find them and that she should not act like a blind person. This enraged Suresh who took an objection for accused No. 2 saying so to his mother and a quarrel ensued between them. It is alleged that accused No. 1 to 3 on the one hand and Suresh on the other, quarreled for sometime in the said regard. Then thereafter, Suresh having become fed up, went to the nearby water tank and jumped into the same. He was followed by PW.3, the mother who also jumped into the water tank. The neighbours were alerted. They fetched out PW.3 as well as

Suresh, PW.3 survived. Suresh was brought back to the house and was made to lie in front of the house, efforts were made to remove the water which had entered into the body. But he breathed last. Accused No. 4 the elder brother who returned to the house, lodged a complaint to the police regards the death of Suresh which came to be registered in UDR No. 13/2996. Investigation was taken over and as the death of Suresh was un-natural, the dead body of Suresh was subjected to Post Mortem examination. The same was conducted by PW.20. He has issued Post Mortem Report as per Ex.P.20. In the Post Mortem report, he has rendered an opinion that the death is due to Asphyxia as a result of throttling. The petitioner here in who was the inmate of the house where Suresh died, was also examined during the course of inquest proceedings. She made a statement to the effect that her husband had committed suicide and none-else is responsible for the death of her husband. Later on, the customary rituals of deceased Suresh were completed on the eleventh day. The rituals and ceremonies were attended by the mother of the petitioner herein, her brother-in-law, sisters and other relatives, On 24.5.1996, the petitioner met her father who was ailing at that point of time she revealed to her father that there was a quarrel between her husband Suresh and accused Nos. 1 to 3, on 12.5.1996, that deceased Suresh in the quarrel had held the tuft of accused No. 3 and accused No. 1 got enraged, he felled him down and throttled him. Accused No. 2 also assisted him in assaulting Suresh. On revealing such information, her father PW.4, who is the complainant told her that the same should be reported to the Police and asked her to accompany him to the Police Station. But she told her father PW.4 that her daughter was suffering from sore throat and she had to go to the Doctor and accordingly, she went to the Doctor and got treatment to her daughter and returned back. However, in the meantime on 24.5.1996, PW.4 the father of the petitioner herein has gone to the Police Station and lodged a complaint as at Ex.P.4, alleging that accused Nos. 1 to 4 had committed the murder of Suresh his son-in-law and on the basis of the said complaint the case came to be registered against accused Nos. 1 to 4 and investigation was taken up. Later on, during the course of Investigation, it is revealed that accused Nos. 5 and 6 were also involved in the case, they were implicated and charge sheet were filed after investigation against accused No. 5 and 6 also. The trial Court on committal, framed the following charge as against

accused.

That A.1 to A.6 on the 12th day of May, 1996, at about 7.30 P.M. at Bekkesodlur village, within the limits of Virajpet Taluk, S.P., in furtherance of your common intention, due to property sharing dispute, you committed murder of Suresh by intentionally or knowingly causing his death by assaulting him with wooden mane, wire chair and also by strangulating his neck by you/A-1 to 4 respectively and thereby you have committed an offence punishable under Section 302 R/W 34 of IPC and within my cognizance.

Secondly, that A.4 to A.6 on the said date, time and place, being legally bound to furnish information of the murder of Suresh you furnished information to the Police, which you knew to be false, and under Section 177 of IPC and within my cognizance.

Thirdly, that A.5 and A.6 on the said date, time and place, and in furtherance of common intention after committing the murder of Suresh, you burnt off the blood stained clothes of the deceased Suresh, with the intention of screening yourself from legal punishment, and thereby committed an offence punishable under Section 201 r/w 34 of IPC and within my cognizance.

3. The prosecution in support of its case examined PWS. 1 to 26, got marked Exs. P1 to P30 and M.Os. 1 to 7. The defence of the accused was one of total denial. However, it got marked Ex.D. 1 - portion of statement of PW. 16 recorded at the time of inquest panchanama, Ex.D. 2 - statement of PW. 16, Ex.D. 2(a) -portion of statement of PW. 10 and Exs.D. 3 - portion of statement of PW. 16.

4. P.W. 1 Raju was working as a servant in the house of A-4. He in his evidence has stated that Suresh died six years back and that he was married to Anitha the petitioner herein. On the date of the incident Suresh had gone to Madikeri to attend a betrothal. He returned to house at about 7 p.m. He had come drunk. He picked up a quarrel with Anitha and after the quarrel he went to a nearby water tank and jumped into the same. Bhagirathi mother of Suresh also went to the tank and jumped into the tank. P.W. bawled out after seeing Bhagirathi jumping into the tank. After hearing the cries of P.W.I, Ramu, Ramakrishna and several others

gathered there. Bhagirathi was lifted out of the water tank. She was found alive. It was 8 p.m. the people gathered over there removed Suresh who had also jumped into the tank. He was still breathing. They attempted to remove the water from the body of Suresh, but within 10 minutes of such attempt he breathed his last. P.W.2 Shankar was working as a driver in the house of P.W.1. He has not supported the case of the prosecution and he has been treated as hostile.

5. P.W. 4 Ponnammaiah is the father of Anitha and father-in-law of deceased Suresh. He in his evidence has deposed that on 24-5-1996 his daughter Anitha met him and informed that it was A-1 to A-3 who had threatened him and killed Suresh and put him into the tank and after some time they removed the body and laid it in front of the house and lodged a complaint saying that he has committed suicide. On receipt of such information he asked his daughter to accompany him to the police station and as Sunitha the daughter of Anitha was sick, she went to hospital to get treatment and because of the same P.W. 4 alone went to the police station and lodged a complaint revealing the information given to him by his daughter Anitha.

6. P.W. 5 Honnaiah, P.W. 6 Chowdamma, P.W. 7 Kanthi have all turned hostile to the case of the prosecution. P.W. 3 is none other than the mother of deceased Suresh. She too has not supported the case of the prosecution. She has stated in the examination-in-chief that immediately after the quarrel her son Suresh got fed up, went and jumped into the water tank. She was also fed up and she too went to the water tank and jumped but unfortunately Suresh died.

7. RW. 8, Muthannammaiah, P.W. 9 Ramakrishna, P.W. 10 Kalamaiah, P.W. 11 Viswanatha who are related to the deceased have also not supported the case of the prosecution and have been treated as hostile.

P.W. 12 Nanjunde Gowda was working as a constable he kept watch over the dead body on 12-5-1996 and he carried the same for post mortem and after post mortem he handed over the dead body to the elder brother of the deceased who is non other than A-4.

8. P.W. 13 Lingaraju was working as a Police Constable, he carried the articles to Forensic Science Laboratory and then thereafter with the examination report, he carried the articles to the investigating officer on 6-7-1996. P.W. 14 Vakkappa who was working as ASI on 7-6-1996 arrested A-1 to A-3 in Bangalore and produced them before the CPI on 8-6-1996.

P.W. 15 Muthanna has only stated that he came to know about the death of Suresh and the people in the village were talking of he having drowned in the water tank and on the date of the incident also Suresh was living along with A-1 to A-4 in the joint family. He has acted as pancha to the inquest panchanama Ex.P. 18.

9. P.W. 16 Anitha is none other than the wife of deceased Suresh. She in her evidence has stated that she along with her husband Suresh and two children was living with A-1 to A-4 in a joint family. That her husband was insisting for his share of property. A-4 was postponing giving of the share on one pretext or the other. There used to be frequent quarrels with regard to the said aspect. That on the date of the incident i.e., on 12-5-1996 her husband Suresh had gone to attend betrothal in the morning and he returned in the evening. He was found drunk. When the mother of Suresh was serving dinner to P.W. 1 and P.W. 2, as A-2 reprimanded his mother and at that point of time Suresh held the tuft of A-2 and because of the same A-2 pushed Suresh and throttled. A-4 came after some time after coming to know about the incident, with the assistance of A-1 to A-3 carried the dead body and dumped the same in the nearby water tank and after some time they brought back the dead body and made it lie in the house. They had also taken the assistance of A-5 and A-6 to dump the body into the tank and bring back the body. A-4 in order to screen the offence of murder lodged a false complaint with the police stating that Suresh had committed suicide. As she was in constant threat of the accused she could not reveal the incident for a long duration of about 12 days and only after the 11th day ceremony she went to see P.W. 4 her father who was ailing; she narrated that her husband had been done to death by A-1 to A-3 and later on during the course of investigation her statement came to be recorded by the police.

10. P.W. 17 Vishnu has stated that he came to know about the death of Suresh on 12-5-1996 at 7-30 p.m. That while he was going towards his house he heard the cries of the people near the tank. He rushed to the tank and found P.W. 3 Bhagirathi in the tank and the servants brought her out of the tank. He also came to know that the deceased Suresh had jumped into the tank and drowned. People of the village brought the body of Suresh out of the tank. He was found breathing and later within 10 minutes he died. The evidence of this witness is crucial. He speaks about Bhagirathi and Suresh found in the tank. People having gathered there and they bringing out Bhagirathi and Suresh from out of the tank and giving first aid to Bhagirathi, she surviving and Suresh despite giving first aid succumbing at the scene of occurrence itself. His evidence has remained un-controverted.

11. P.W. 18 Harish was working as a police constable. He carried the FIR to the jurisdictional Magistrate and reached the same at 3 p.m. on 24-5-1996. Ex.P.9 is the FIR registered on the basis of the complaint filed by P.W. 4 father of Anitha. P.W. 19 MA. Appaiah was working as Dy. S.P. Virajpet. On 24-5-1996 he received a written complaint at 7 p.m. from P.W. 4. He forwarded the same to the jurisdictional Police Station. Ex.P. 4 is the complaint received by him. He in his evidence has deposed that on 29-5-1996 A-5 and A-6 voluntarily surrendered before him.

12. P-W. 20 Dr. Rangaswamy conducted the post mortem examination on the dead body of Suresh. He in his evidence has that Suresh dies because of asphyxia. Though in his evidence he has stated that death is due asphyxia as a result of throttling as opined in the post mortem report marked as Ex.P.4, he concurs with the observation of Dr. Modi on the issue of Mode of death by asphyxia which reads as follows:

(i) Asphyxia

The mechanism of death in acute drowning is irreversible cerebral anoxia. The present thought is that the most important physiological consequences of drowning is hypoxemia. This is a common cause in the majority of cases, as water getting into the lungs gets churned up with the air and the mucus, and produces a fine froth, which block the air vesicles.

In a few cases, death may occur from obstructive asphyxia also known as dry drowning caused by the laryngeal spasm set up by a small amount of water entering the larynx. In such a case, water does not enter the lungs and the classical signs of drowning belong to this category. It should be noted that spasmodic closure of the vocal cord is not detectable in postmortem examination.

In drowning under the influence of alcohol, the death is sudden without any struggle, such cases have been reported from Norway. Sudden cooling of the skin on the chest and the abdomen causes dyspnoea and an often uncontrollable hyperventilation, a reaction triggered from the cold receptors in the skin, which may result in a cardiovascular collapse through ventricular fibrillation (Immersion Syndrome, Hydrocution).

13. It is argued on behalf of the accused that merely because P.W. 20 has stated that death is due to throttling the same is an opinion and the ocular evidence belies the medical evidence. P.W. 17 has clearly stated that Suresh was fished out of the water tank and he breathed his last and his evidence has not been challenged and it is the case of the prosecution itself that he had drowned into the water tank and cause of asphyxia could be for the reasons as stated above and as such since the opinion of P.W. 20 does not prevail over the ocular evidence and there being possibility of he committing an error in rendering an opinion and also the fact of the hyoid bone of deceased Suresh being intact, would reveal that the death was not due to throttling and as such the opinion of the doctor cannot form the basis to hold the petitioners/accused guilty of the charges levelled against them.

14. P.W. 21 Lohith is a panch witness for mahazar Ex.P. 21. P.W. 22 Harischandra was working as Head Constable who conducted inquest panchanama conducted on 13-5-1996. He also deposed that post mortem was conducted at the spot itself by the doctor. P.W. 22 further admits that when the inquest panchanama was conducted on the next day of the incident i.e., 13-5-1996 the mother of Anitha as well P.W. 4 father of Anitha were also present. At this point, it should be noted P.W. 4 has filed a complaint on 24-5-1996. Though he was present at the time of inquest which was conducted on 13-5-1996, P.W. 23

Nambiar C.P.I recorded the statements of few witnesses seized the wooden plank, plastic chairs, drew up mahazar of the scene of occurrence and filed a charge sheet as against the accused persons on the basis of the complaint lodged by P.W. 4 on 24-5-1996.

15. P.W. 24 Govindaraju was working as P.S.I, of Ponnampet. He in his evidence has stated that A-4 came to the Police Station on 12-5-1996 and reported that his brother had drowned himself in the water tank and on the basis of the said report he registered UDR No. 13/199 and conducted inquest mahazar over the dead body. Later on after a period of 12 days on 24-5-1996 at about 10 a.m. he received a complaint through the Dy. S.P. He registered a case in Cr. No. 106/1996 for an offence punishable under Section 302 IPC and later on after forwarding the FIR to jurisdictional Magistrate he visited the spot and drew a spot panchanama as per Ex.P. 14 and handed over further investigation to CPI.

16. The Trial Court on appreciation of the material on record more particularly the delay in lodging of the complaint by P.W. 4 on 24-5-1996 though the incident had occurred on 12-5-1996 and though he was found present at the time of inquest on 13-5-1996 as admitted by the police constable who drew the inquest mahazar and taking into account the evidence of the witnesses who had seen Suresh being fished out of the water tank has held that the prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt.

17. It is argued on behalf of the petitions: that post mortem report reveals that the death was due to throttling and was not due to drowning and as such the material evidence has been shut out by the trial Court and the trial Court has erroneously acquitted the accused persons. The evidence of the doctor P.W. 20 is opinion evidence. The post mortem was conducted on the scene of occurrence itself. The ocular evidence reveals that the body of Suresh was fished out of the water. There is enormous delay in lodging of complaint. No satisfactory explanation is coming forth for the delay in lodging the complaint. The explanation given by P.W. 1 Anitha that she was under the threat of the accused persons is falsified by the evidence of P.W. 17 and P.W. 22 who have stated that her father P.W. 4 was present when the inquest panchanama was drawn and as such her version that

after the death of her husband after some time she met her father only on 24-5-1996 is found to be false. The observation of Dr. Modi reveals possibility of asphyxia are likely to occur in case of drunken man when drowned the water may not enter the lungs at all and the classical signs of drowning will be absent--Order of acquittal is justified. In view of the same, I hold that there is no error in the passing of the order of acquittal by the trial Court acquitting the respondents/accused. Hence, the following.

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