

Suryakanth Vs. State of Karnataka, Through Sub-inspector of Police

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Court : Karnataka

Decided On : Jun-18-2003

Reported in : 2003CriLJ3562; II(2004)DMC832; ILR2003KAR2720; 2003(5)KarLJ373

Judge : N.S. Veerabhadraiah, J.

Acts : Indian Penal Code (IPC) - Sections 306; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 374(2); Code of Civil Procedure (CPC) - Sections 306

Appeal No. : Criminal Appeal No. 852/1997

Appellant : Suryakanth

Respondent : State of Karnataka, Through Sub-inspector of Police

Advocate for Def. : C. Ramakrishna, HCGP

Advocate for Pet/Ap. : S.J. Chouta, Adv.

Disposition : Appeal partly allowed

Judgement :

Veerabhadraiah, J.

1. The appellant-accused being aggrieved of the conviction and sentence passed in S.C. No. 63/89 by the Additional Sessions Judge, Bidar for the offence under

Section 306 IPC sentencing him to undergo R 1 for a period of 3 years and to pay a fine of Rs. 2,000/ and in default of payment of fine to undergo R I for a further period of 6 months has come up with this appeal.

2. The case of the prosecution in brief are as follows:

The deceased Sangamma was staying with her mother P. W. 1, Bakkamma at Mustari village as the husband had deserted her. On 22. 6.1988, the deceased Sangamma committed suicide by jumping into the well situated in the garden land of one Gunderao Kulkarni in Mustari village as the accused attempted to outrage her modesty 8 day prior to that date P W 1, Bakkamma proceeded to Chituguppa Police Station and lodged a complaint on 23.6.1988 as per Ext. P. 1 with P.W. 12, Prabhudas. A case was registered in Crime No 52/88 for the offence under Section 306 IPC. The police proceeded to the spot, the dead body was removed and an inquest mahazar was held as per Ext. P.5. The post mortem was conducted and after completion of the investigation, a charge sheet has been filed against the accused for the offence under Section 306 r/w 354 IPC. The presence of the accused was secured. Charges were framed for the offence under Section 306 r/w 354 IPC. The accused pleaded not guilty and claimed to be tried.

3. The prosecution examined in all 13 witnesses as P.Ws 1 to 13, marked Exts. P. 1 to P. 8 and produced M Os I to 5. The statement of the accused under Section 313 Cr P. C. was recorded. The accused did not choose to lead any evidence. The learned Sessions Judge found the accused guilty of the offence under Section 306 IPC and after hearing the accused sentenced him to undergo R I for a period of 3 years and to pay a fine of Rs 2,000/- and in default of payment of fine, to undergo R I for a further period of 6 months. It is this judgment of conviction and sentence which is now questioned in the present appeal.

4. Learned Counsel Sri S.J. Chouta, for the appellant-accused contended that the evidence of P. W. 1, Bakkamma cannot be believed at all as she did not lodge any complaint immediately after she was informed by the deceased regarding the outraging of her modesty. The evidence of P. W. 3, Channabasappa also cannot be believed as he has been helping the family of P W 1, Bakkamma since a very long time. He has further contended that there is no element of instigation so as to

drive the deceased to commit suicide. If, she were to have committed suicide, it is only a voluntary act wherein the accused cannot be held responsible for the said act. When the ingredients of Section 306 IPC have not been established, the learned Sessions Judge has erred in coming to the conclusion that the accused was responsible for the commission of the offence of abetment to commit suicide and that the prosecution has not placed any cogent and satisfactory evidence on record to hold that this accused abetted the deceased to commit suicide. It is nextly contended that the testimony of P W 1, Bakkamma, P W 3, Channabasappa and P W 6, Shantha are all of interested witnesses. Therefore, even for the offence of Section 354 IPC, there are no materials on record. Thereby, the prosecution having miserably failed, the learned Sessions Judge has wrongly convicted the accused without appreciating the testimony of the prosecution witnesses. Therefore, prayed to allow the appeal by setting aside the judgment of conviction and sentence.

5. Learned High Court Government Pleader Sri C. Ramakrishna vehemently contended that it is on account of the fact of the accused outraging the modesty of Sangamma, she was forced to commit suicide by jumping into the well situated in the land of one Gunderao Kulkarni. It is clear from the evidence of P. W. 1, Bakkamma, P. W. 3, Channabasappa and P. W. 6, Shantha that the accused made an attempt to outrage the modesty of Sangamma. To that effect, the evidence of P. W. 4, Veerashetty and the evidence of P. W. 5, Ghasi Sab also support the case of the prosecution wherein P. W. 1, Bakkamma was found quarrelling with the accused after the incident questioning the accused as to why he made an attempt on her daughter. He therefore submitted that the ingredients of Section 354 IPC are proved and it is on account of the said fact, the deceased having humiliated committed suicide and thereby, justifies the conviction and sentence passed by the trial Court. Accordingly, prayed to dismiss the appeal.

6. In the light of the submissions, the point for consideration that arises is:

'Whether the prosecution has proved that the deceased committed suicide due to the act of abetment of the accused as he made an attempt to outrage her modesty? If so, the conviction and sentence is liable to be interfered with?'

7. It is in the evidence of P. W. 1, Bakkamma that the deceased was married to one Thippanna about 4 years prior to her death and that she was having a small child. It is also in her evidence that the deceased's husband had quarrelled with her. Therefore, she has left him and came to the house of P. W. 1, Bakkamma and staying with her at Mustari Village. It is the case of the prosecution that 8 days prior to 22.6.1988 that while the deceased was proceeding to her land near a nala, the accused was also proceeding behind her and when she reached the nala, all of a sudden, the accused caught hold of Sangamma and attempted to outrage her modesty, by which time P. W. 3, Channabasappa rushed to the spot who was at a distance. By then, the accused escaped from that place. The evidence of P. W. 3, Channabasappa shows that one day at about 8.00 A M he was proceeding towards his land. At that time the accused Suryakanth as well as the deceased Sangamma were proceeding ahead of him. His lands are also situated towards the naia. He took a deviation towards his land whereas the accused and the deceased Sangamma were proceeding towards the stream. Then immediately he heard the screaming sound of Sangamma. He rushed to the spot and saw the accused was found sitting on the chest of Sangamma. Then immediately, the accused ran away. The other people also gathered. In the cross examination, at paragraphs 9 and 10, he has specifically stated that at that point of time no others were proceeding in the path way. It is only himself, the accused and the deceased who were proceeding. He has also stated that he saw the accused sitting on the chest of Sangamma by standing on the other side of his land. Thereafter, Sangamma went away. So also the accused also ran away from the place. In order to disbelieve the testimony of P.W. 3, Channabasappa to the effect that he witnessed the incident of accused sitting on the chest of Sangamma, nothing much importance is elicited. There is also nothing to disbelieve the testimony of P.W. 3, Channabasappa in so far as witnessing the incident in question.

8. Now coming to the evidence of P.W. 1, Bakkamma, she has categorically stated that her daughter informed her about the incident on the same day and that she pacified her. It is the natural conduct of a daughter to inform such incidents only to the mother and sisters or to the close relatives of the family. It is also in the evidence of P W 1, Bakkamma that the accused was not found in the village for about 8 days after the incident. Her testimony shows that in respect of the incident

of outraging the modesty, she questioned the accused. It is in the evidence of P.W. 4, Veerashetty and P.W. 5, Ghasi Sab that they have seen P.W. 1, Bakkamma questioning the accused as to why he did such an act. That apart, the evidence of P.W. 6, Shantha, the sister of the deceased also goes to show that Sangamma informed her about the incident of what the accused did. Therefore, from that day onwards she has become little bit annoyed and panic. Thus from the evidence of P.W. 1, Bakkamma, P.W. 3, Channabasappa, P.W. 4, Veerashetty, P.W. 5, Ghasi Sab and P.W. 6, Shantha, it clearly establishes the fact of the accused outraging the modesty of Sangamma.

9. The contention of the learned Counsel Sri S.J. Chouta is that there was no complaint immediately after the incident. Therefore, the evidence of the above witnesses cannot be believed at all. Nevertheless, though P.W. 1, Bakkamma did not lodge the complaint, the fact remains that P.W. 1, Bakkamma made an altercation with the accused and the same was witnessed by P.W. 4, Veerashetty and P.W. 5, Ghasi Sab and it is also clear from the testimony of P.W. 3, Channabasappa, that he had witnessed the incident; and merely because of the reason that immediately after the incident the complaint was not lodged itself is not a ground to disbelieve their evidence. Therefore, from the evidence of the above witnesses, the prosecution could be able to make out an offence under Section 354 IPC.

10. Now it has to be examined whether on account of the fact of outraging the modesty of the deceased that has made her to commit suicide.

11. Section 306 IPC reads thus:

'306 Abetment of suicide, - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine'

12. To base a conviction for the offence under Section 306 IPC, the prosecution has to make out the commission of suicide by a person and the accused has abetted the commission of suicide thereof. If the act of abetment were to be

proved, then the accused is liable to be convicted under Section 306 IPC.

13. On going through the entire evidence of the prosecution witnesses, there is no clinching evidence so as to believe that the accused caused such an act of abetment to the deceased so as to drive her to commit suicide. In the absence of proof of the ingredients of Section 306 IPC, the question of basing conviction for the said offence does not arise.

14. It has clearly come in the evidence of P.W. 1, Bakkamma that on account of the fact the husband of Sangamma has left her, she was little bit annoyed. It is also in the evidence that there was quarrel between Sangamma and her husband and though Sangamma was ready and willing to go to her husband's house, her husband has not taken her back to his house and Sangamma used to weep and worry always that her husband has not come to the house. This may be the main reason for her to commit suicide. The mere act of outraging the modesty itself cannot be construed that it has caused an act of abetment to the deceased so as to commit suicide.

15. In the case of WAZIR CHAND AND ANR. v. STATE OF HARYANA, : 1989 CriLJ809 while considering Sections 306 and 107 IPC, it is observed that there should be an act of instigation so as to drive a person to commit suicide. In the absence of it, conviction under Section 306 IPC is not sustainable though conviction is maintained under Section 498-A IPC.

16. In the case of SATISH v. STATE OF MAHARASHTRA, 1997 Cri LJ 935 it is observed as follows:

'What was really required to be found out was as to whether the accused intended by not marrying that she would commit suicide or whether he knew that she was likely to commit suicide. The learned Sessions Judge has precisely avoided to fix up this intention or knowledge on the part of the accused so as to hold him guilty of the abetment'.

17. In the present case, the intention and act of the accused that has come out from the evidence of the prosecution witnesses is only to outrage the modesty and

he never intended to instigate or abet the deceased to commit suicide.

18. In the case of STATE OF GUJARAT v. SUNILKUMAR KANAIYALAL JANI, 1997 Cri LJ 2014, it is observed that the mere quarrel with the wife will not amount to abetment and acquitted the accused for the offence under Section 306 IPC.

19. On a careful scrutiny of the testimony of the prosecution witnesses, I am of the opinion that 'the learned Sessions Judge has erred in convicting the accused for the offence under Section 306 IPC though the required ingredients of instigation or abetment are not proved. Therefore, the conviction and sentence of the accused for the offence under Section 306 IPC is liable to be set aside. But the fact remains that from the evidence of the above witnesses as already reasoned, it fully establishes that the accused is liable to be convicted for the offence under Section 354 IPC.

20. Regarding imposing the sentence, heard the learned Counsel Sri S.J. Chouta. He submits that the accused has already undergone imprisonment for a period of over 1 year and 6 months. Therefore, the period already undergone may be taken as the period of imprisonment and prayed to allow the appeal.

21. It appears there is some justification in the submission of the learned Counsel for the appellant. The accused has been taken into custody in pursuance of the conviction and sentence and he has already undergone the sentence for over a period of 1 year and 6 months. Therefore, for the offence under Section 354 IPC, the sentence of imprisonment already undergone suffices the matter.

22. Accordingly, the accused is convicted for the offence under Section 354 IPC for the period already undergone by him.

With the said observation, this appeal is partly allowed.

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