

Mahantesh Vs. the State of Karnataka

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Court : Karnataka

Decided On : Mar-31-2005

Reported in : ILR2005KAR4061; 2006(2)KarLJ598

Judge : S.R. Bannurmath and ;K. Ramanna, JJ.

Acts : Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 831/2002

Appellant : Mahantesh

Respondent : The State of Karnataka

Advocate for Def. : B.A. Belliappa-GP, Adv.

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Disposition : Appeal dismissed

Judgement :

S.R. Bannurmath, J.

1. Being aggrieved by the judgment of conviction dated 4.4.2002 passed by the Learned Sessions Judge, Belgaum, in Sessions Case No. 97/2000 finding the accused guilty of the offences punishable under Section 302 IPC and sentencing

him to imprisonment for life, the present appeal is filed.

2. The brief facts giving rise to the present case as per the prosecution are as follows:-

The deceased Bharathi daughter of PW-1 Thangawwa originally resident of Hulikavi Village was married to accused about seven years prior to her death on 18.11.1999. According to the prosecution after the marriage, the accused who hails from Muthwad Village in Saundatti Taluk came to eke his livelihood and settled in the Janatha Plot houses at Hirebagewadi. According to the prosecution, in spite of seven years of marriage the deceased did not get any children and angered by the same, the accused used to assault her, treating cruelly especially while in drunken condition. It is alleged that in spite of advice from the mother and others, the accused did not mend his ways. The ultimate result of this was brutal murder of Bharathi in the afternoon of 18.11.1999 in her house itself.

As per the prosecution, PW-3 Kasturi and her husband PW-9 Suresh were the neighbours of the accused and the deceased and his mother P W-10 along with another PW-4 Roshan. It is alleged in the afternoon about 1 p.m. the neighbours heard the quarrelling and shouting as well as cry of woman from the house of the accused and when they came out of their houses they saw the accused coming out of the house with blood stained hands as well the clothes stained with blood and it is stated that after closing the door, he told others that he has committed murder of his wife and demanded Rs. 20/- to go away, but on refusal he ran away from the spot with an axe in his hand. Thereafter, PW-7 Raja, acquaintance of the deceased and her mother, sent words to PW-1 about the murder of her daughter. It is the case of the prosecution that she arrived around 9 p.m. in the night and thereafter, with the help of PW-2, Gurusiddaiah, gave a written complaint as per Ex.P 1 to the jurisdictional police at Hirebagewadi. PW-15 ASI and SHO of the police station on the basis of search complaint registered a case in crime No. 192/1999 and takes up investigation. The necessary procedures like drawing up of spot mahazar, inquest procedure, seizure of articles from the crime scene and recording of the evidence of the witnesses is done on the next day and search for the accused is set in and on 19th the accused is arrested at Nesargi cross on

Belgaum Bagalkot road, brought to the police station and interrogated. In the police station it is alleged that the accused made voluntary statement, admissible portion marked as perEx. P. 19, leading the police and the mahazar witnesses to discover the blood stained clothes of the accused Mo'S 10 and 11 as well as the axe MO.9 said to have been used for the crime. The same were seized and sent to the forensic science laboratory along with the clothes of the deceased. After receipt of the necessary reports like FSL, autopsy etc. and on completion of the investigation, chargesheet against the accused is filed under Section 302 IPC.

After committal proceedings and on the basis of the chargesheet material, accused is charged for the offence under Section 302 IPC. Since the accused denied the charge and claimed to be tried he is tried in sessions Case No. 97/2000.

In order to establish its case the prosecution has relied upon the evidence of PW'S 1 to 17 as well as the Exhibits P1 to P25 and MO'S 1 to 11. Apart from the total denial of the prosecution case while being questioned under Section 313 Cr.P.C, the accused has given a written statement proclaiming himself to be an innocent and set an alibi to the effect that on that day he was in the parental house at Muthawad in Saundatti Taluk and only after coming to know of the incident he came down and learnt that one Rajashekar Salimani (PW-7) was responsible for the murder of his wife. He further alleges that the police have deliberately not lodged the case against the said person, but have falsely implicated in the crime in question.

The Trial Court on appreciation of the entire evidence and on going through the arguments of both the sides, by the impugned judgment held that the prosecution has proved the case against the accused beyond reasonable doubt and accordingly, convicted him. As stated earlier, as against this judgment of conviction and sentence the present appeal is filed.

3. Sri. Ravi Deshpande, Learned Counsel for the appellant, taking us through the entire evidence vehemently contended that the entire approach of the Trial Court in appreciating the evidence is illegal and contrary to the well settled norms. He contended that there is an inordinate delay in lodging and complaint and this delay

has been utilised by the police and the prosecution witnesses especially PW-1 to falsely implicate the accused. In this regard, he relied upon the pronouncement of the Apex Court in the case of Ganesh Bhavan Patel v. State of Maharashtra, : 1979 CriLJ51 . Highlighting the same, he further contended that even though the police were aware of the incident much earlier to 9'0 clock as the police station is hardly one for long away from the Crime scene, non action on the part of the police either in recording the first information through the neighbours or suo motu shows that the police intended to purchase the time for deliberating and to give shape to the prosecution case so as to falsely implicate the accused. Pointing out towards the evidence of the prosecution witnesses, he contended that though the prosecution witnesses PW's 3, 4, 9 and 10 were the immediate neighbours and have supported the investigating agency earlier, have given complete go by to the prosecution case and as such have been declared as hostile witnesses. It is submitted that the entire object of the investigating agency and the prosecution to examine these was to show the presence of the accused at the time of the incident is coming out of the house wherein blood stained clothes as well as holding the alleged murderous weapon, the axe. It is contended that once the witnesses have not supported the prosecution there is absolutely no material whatsoever to hold that the prosecution has proved its case beyond doubt much less reasonable doubt. He also pointed out towards the discrepancy in the evidence of the prosecution witnesses as to the wearing apparels, as spoken to by PW-3, pant and a shirt vis-a-vis the alleged recovery of the banian and the lungi by the police again said to have been blood stained would indicate that the investigating agency had created the evidence falsely so as to fix the appellant with crime in question. On these among other grounds it is contended that the entire evidence of the prosecution is been untrustworthy ought not to have been relied upon by the Trial Court to convict the appellant with a serious crime of murder.

4. On the other hand, Sri. Belliappa, the Learned Counsel for the State, argued in support of the finding of the Trial Court and the evidence of the prosecution as well as the findings of the Trial Court.

5. We have heard both the Learned Counsels at length and perused the entire evidence in detail. At the outset, so far as the fact that Bharathi met with homicidal

death in her house on 18.11.1999 in or around night time in the house No. 204 Janatha Plot, Hirebagewadi is not much in dispute. Even otherwise, the evidence of the neighbours, the mother of the deceased, the inquest proceedings and other mahazars like spot mahazar, recovery mahazar and especially the post mortem report Ex.P.20 clearly indicate that the deceased Bharathi had suffered as many as six incised injuries on her person. These external injuries noticed are as follows:-

External injuries:

1. Incised wound on the right side head, just above the right ear, anterior posterior in direction measuring 4' long x 2' wide x 1 1/2' deep, fractured bones of skull (parietal and temporal are seen). The brain mass was coming out from the wound.
2. Incised wound on the middle of the neck measuring 6' long x 2 1/2' wide, extended from the middle of the anterior part of the left side of the neck, (left lateral part of the neck). It was 3/4' deep. The thyroid gland was ruptured, trachea arteries and veins were ruptured.
3. Just below the second wound, there was a incised wound on the neck (lower part) measuring 2 1/2' x 1 1/2' x 1/2' deep, trachea arteries, veins were ruptured.
4. Incised wound on the right side breast at the middle part 4' long, 1/2' wide x 2' deep. The direction of the wound was above downwards.
5. Incised wound on the anterior abdominal epigastric area measuring 4' x 1 1/2' x 1 1/2'.
6. Incised wound on the left breast at the middle measuring 4' long x 1/2' wide and 2' deep. The direction of the wound was above downwards.

On dissection, the auto pay doctor noticed fracture of right parietal temporal bones, brain membrane ruptured, walls of the thallus incised pleura, trachea ruptured as well as the lungs. He also noticed incised injury in the epigastric area and there was some undigested food in the stomach. According to the doctor these injuries were antemortem in nature and the cause of death was due to shock

and hemorrhage as a result of multiple injuries and especially the vital organ like brain. The doctor has opined that death might have occurred between 18 to 24 hours before the time of postmortem. The doctor who had later occasion to examine MO9, the axe, has also opined as per Ex.P.22 that the injuries on the deceased could be caused by use of such weapon. It is also to be noted that even the accused in his 313 statement has not only not disputed the death of his wife Bharathi inside the house where he was usually residing, but also has stated that she was murdered. This part of the evidence leaves no doubt in our mind that on 18.11.1999 Bharathi, wife of the accused, met with homicidal death amounting to murder. But the main question before us is; who caused the death of Bharathi and more specifically whether the prosecution has succeeded in bringing home the guilt against the accused.

6. It is to be noted that there are no eye witnesses to the incident and as such the entire case of the prosecution revolves round the evidence of circumstantial in nature. Time and again, the Hon'ble Supreme Court and this Court have laid down the guiding principles as to how the evidence of circumstantial in nature has to be appreciated and considered by the Courts.

7. We have gone through the well settled principles laid down by the Hon'ble Supreme Court in the case of Bhagath v. State of Punjab : AIR 1954 SC621 , Bakshish Singh v. The State of Punjab 1971 SC 2061, Ramdas v. State of Maharashtra : 1977 CriLJ955 . The Hon'ble Supreme Court In The Case of Gambhir v. State of Maharashtra : 1982 CriLJ1243 in fact prescribed three tests for the satisfaction of the Court before accepting the circumstantial evidence. The tests are as follows:-

- i) The circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- ii) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime

was committed by the accused and none else.

In the case of Earabhadrapa v. State of Karnataka, AIR 1983 SC 446 and in case of State of Uttar Pradesh v. Ashok Kumar Srivastava : [1992]1SCR37 . The Hon'ble Supreme Court observed that

'While appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this not to say that the prosecution must meet any and every hypothesis put forward by the accused however farfetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection.

In the case of State of West Bengal v. Mir Mohammed and Ors. : 2000 CriLJ4047 the Hon'ble Supreme Court observed 'the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule nor would it impair the temper of the rule.'

The Apex Court in the aforesaid decision itself has observed that the Court is required to consider by proper reasonings and inference from the proved facts regard being had to the common course of natural events human conducts in relation to the facts of the case and adopt rational realistic approach while administering justice in criminal cases for arriving at the truth and there is no scope for adopting hypothetical approach or extend no doubt altitude in favour of the accused which only tend to cause erosion in maintenance of the law and order of and essentially in the larger interest of the society and the mankind.

We are also tempted to quote the observations of the Hon'ble justice V R Krishna Iyer in the case of Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra, : 1973 CriLJ1783 .

Para 6: Even at this stage we may remind ourselves of a necessary social perspective in criminal case which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiments that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles are golden thread of proof beyond reasonable doubt which runs thro: the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then brake down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned author has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, without Viscount Simon, that 'a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.' In short our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibility as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents'.

Keeping in view these well settled principles we have considered the entire evidence and re appreciated the same as well as considered the reasonings of the

trial Court.

8. Out of 17 witnesses examined by the prosecution, PW-1 is the mother of the deceased and who has set the criminal investigation in motion by presenting Ex.P1, a written complaint scribed by PW-2. PW'S 3, 4, 9 and 10 are the neighbours of the deceased and the , accused. It is to be noted that as they had not supported the case of the prosecution to some extent they have been treated as hostile witnesses and even cross examined. PW-7 Raja is the person who had, on learning about the ghastly murder of Bharathi, informed PW-1. He also speaks about the motive part and thus corroborate PW-1 in this regard. PW'S 5, 6, 8 and 11 are various mahazar witnesses witnessing the inquest seizure of blood stained clothes of the deceased, blood stained clothes of the accused as well as the murderous weapon MO9. PW-17 doctor Venkappa has conducted the autopsy over the dead body and has given the report as per Ex.P.20. The remaining are the members of the investigation.

9. As the prosecution case is relying upon the circumstances, on analysis and scrutiny of the prosecution case the following are the circumstances relied upon by the prosecution:-

i) Motive;

ii) Homicidal death;

iii) Presence of the accused and his coming out of the house with blood stained clothes and weapon;

iv) Recovery of the same on the information furnished by the accused and thus admissible under Section 27 of the Indian Evidence Act;

v) False alibi put forth as well non explanation on the part of the accused.

9. Before considering the evidence at the there should it is necessary to consider the argument of the Learned Counsel for the appellant regarding delay in registering the case.

According to the Learned Counsel even though incident has taken place in broad day light around 1 p.m. and the police station is hardly one kilometer, the complaint is registered at 9 p.m. (after eight hours). No doubt, there is some merit in the argument. In fact the evidence of police shows that though they came to know about incident earlier, they were waiting for relative of deceased to come forward (from neighbouring village). This answer shows total negligence and ignorance of the investigating officer. As soon as he came to know of the incident and visited the spot, he should have taken statement of neighbours present and registered even suo-motu case. In not doing so, has led to present argument. However, as observed by Apex Court, delay simpliciter will not enure to the benefit of accused, unless it is shown that this delay has been used by prosecution witnesses and police to falsely implicate the innocent (?) accused. We do not find any such material and hence the delay of even eight hours, because of negligence of the investigating officer will not make the entire prosecution case false, especially if other circumstances are proved by the prosecution.

10. We consider the circumstances one by one and their cumulative effect:-

Motive: So far as motive is concerned, PW-1 the mother, PWS 3,4,9 and 10 out of whom except PW1 have been treated as hostile. Though considered as hostile has in unison stated that after spending seven years of married life, the couple viz. the accused and the deceased did not get any children and in this regard there used to be frequent quarrels between the accused and the deceased. Thus, corroborating PW-1 in this regard. PW-1 in fact has stated that whenever the deceased used to come to her parental house she used to complain about the alleged assault of the accused on her person because of not getting any children. We find this part of the prosecution is acceptable especially when the same is cogently and consistently spoken to even though there is hostile attitude of all of the neighbours on different aspects. Though this motive may appear not enough to carry out having a demonic mind to commit ghastly murder of a wife, strange are the attitudes and mind of the accused. As the Courts have repeatedly laid down motive being an act of mind is always locked up in the mind of the culprit. But merely prosecution has not unravelled as to how this led to the accused to commit such ghastly crime, it need not be treated as fatal weakness to the prosecution

case. In this regard the observations of the Apex Court in the case of State of Himachal Pradesh v. Jeet Singh 1999(1) SCC (Cri) 539 are worth noticed. 'When the prosecution succeeds in showing the possibility of some ire for the accused towards the victims, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to commit offences cannot be construed as fatal. It is almost an impossibility for the prosecution to unravel the mental altitude towards a person whom he offended'.

At this stage itself it would be necessary to note the argument of the Learned Counsel for the appellant as well as the stand of the accused himself. Except a bare statement in 313 Cr.P.C. and written statement that it is PW-7 Rajashekhar who is responsible for such murder, nothing even by way of suggestions put to any witness by defence to show whether that person had any enmity with the deceased or even with the accused much less committed murder, how and under what circumstances. As this stand is taken at the stage of 313 statement without substantiating the same, it is clear to us that it is only an after thought only since no such suggestions has been made to PW-7 himself that he carried some will or enmity towards the deceased or even towards the accused. In the absence of any contra indicating material we are of the view that the prosecution has shown motive or at least some ire on the part of the accused possibly to kill his wife, but again we have also to consider the other circumstantial evidence to find out as to guilt of the accused.

11. The next circumstance is the presence of the accused in the village and in fact the other neighbours seeing him coming out of the house with blood stained clothes and holding the weapon. In this regard, the prosecution has relied upon the evidence of the neighbours P W's 3,4,9 and 10. As already noted the neighbours have not supported the prosecution in its entirety. On going through the entire evidence as well as the cross examination it appears to us that they are supporting the prosecution as well the accused simultaneously and half heartedly. Only on the ground that they have given a go by to their earlier statements recorded during the investigation, the prosecution has treated them as hostile witnesses. But the law so far as appreciation of evidence of such hostile witnesses is again well settled. It is well settled that the attitude of the witnesses during the

investigation in the Court will not automatically make the Court the entire evidence as false. It is open for the Courts to accept the statement of even the hostile witnesses which inspires the confidence in the mind of the Court. This is based on the principles that 'Falsus in Uno Falsus in omnibus' is not applicable in criminal cases and as such Courts should separate grain of truth from chaff of falsehood. If one peruses the evidence of PW-3 and her husband PW-9 even though they are treated as hostile, it is apparent that PW3 infact has though admitted seeing accused around 1.30 p.m. her departure is regarding only the place where she saw the accused on 18.11.1999. According to her she met the accused while PW-3 was coming from the school where she was working on the way. The departure is only as noted above. However, in the cross examination by the public prosecutor again she reiterates practically what she stated earlier before the police during the investigation. The cross examination of this witness by the defence is only confined to whether the accused demanded Rs. 20/- and informed PW-3 and 6 not to open the door. Thus the presence of the accused in the village in the afternoon of 18.11.1999 is positively established by the prosecution. This aspect is necessary for reconsideration since the accused has raised specific alibi that he was not at all present in the village but he was at Muthwad. It is will settled that when the accused takes up the plea of alibi of his absence in the village or the place of murder it is for him to establish his alibi. No doubt, the burden of proof on the accused is not as strict as on the prosecution witnesses. But, it is by even preponderance of probability that the accused could establish his presence or absence. In the present case except the bare statement in the 313 statement we find absolute no suggestions are made or any attempt has been made by the accused to show that he was absent in the village at the time of the incident. On the other hand, admission of PW-3 though hostile clearly establishes the fact that the accused was very much present in the village and was seen moving immediately after the incident of murder. Thus, we find that the prosecution has successfully shown the presence of the accused in the village.

12. Once the presence of the accused and motive is established by the prosecution since this is a case of house murder that too of the wife of accused himself, in our view, then it is for the accused to explain as to what happened to his wife or under what circumstances she met with homicidal death. Considering

various pronouncements of the Hon'ble Supreme Court, this Court in the case of Sannegowda @ Gopala v. State By Sakleshpur Rural Police ILR 2001 KAR 2660 has held that once the prosecution proves incriminating circumstances especially motive, presence or last seen together theory, it is for the accused to explain especially as to when he parted the Company of the deceased and if there is no explanation or any , explanation offered is found to be false, then the Court is entitled to draw inference of such non explanation as providing missing link in the chain of circumstances. The Hon'ble Supreme Court in the case of Joseph S/o. Koovelipoulo v. State of Kerala : 2000 CriLJ2467 has reiterated this principle.

13. In view of the prosecution proving these three material circumstances against the accused, the Court need not go further. But added to this the last circumstance viz. the recovery of blood stained clothes and especially the murderous axe on the information furnished by the accused found to be hidden would assume much importance. No doubt, the Learned Counsel for the appellant tried to point out certain discrepancy in the evidence of the prosecution witnesses who are admittedly hostile. In the words of the Hon'ble Supreme Court Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra, (Supra) too sophisticated approaches familiar in Courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our village. When scanning the evidence of the various witnesses, the Court has to inform itself that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

14. After giving our anxious consideration to the entire evidence and reappreciating the same in the light of arguments and after considering the reasonings arrived at by the trial Judge, we find that the prosecution has proved the guilt of the accused beyond reasonable doubt. The reasons and the finding of the Learned trial Judge in our view are just and proper and we find absolutely no illegality much less perversity in appreciating the evidence.

15. Hence, we find the appeal is devoid of merits. The appeal fails and the same is dismissed confirming the judgment and sentence passed by the Learned Sessions Judge.

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