

Raja Aliasnagaraja Vs. State of Karnataka

Raja Aliasnagaraja Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/385213

Court : Karnataka

Decided On : Jun-18-1999

Reported in : ILR1999KAR3573; 1999(6)KarLJ235

Judge : M.F. Saldanha and; N.S. Veerabhadraiah, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302; [Evidence Act, 1872](#) - Sections 3 and 27

Appeal No. : Criminal Appeal No. 332 of 1996

Appellant : Raja Aliasnagaraja

Respondent : State of Karnataka

Advocate for Def. : Sri B.V. Pinto, Additional State Public Prosecutor

Advocate for Pet/Ap. : Sri B.G. Kotrappa for Sri ; Kallemulla Shariff, Adv.

Judgement :

ORDER

M.F. Saldanha, J.

1. The appellant who was the original accused in Sessions Case No. 65 of 1994 before the learned Additional Sessions Judge, Chitradurga, was alleged to have committed the murder of his wife Nagarathamma at 7.30 p.m. on 2-2-1994 in a

sugarcane field in Sy. No. 255/P of Kadajji Village, Davanagere Taluk. The prosecution alleged that the accused and the deceased were friendly with each other for some time and that certain incidents had taken place involving the accused whereby the deceased had run away with him and even criminal cases were registered. The record indicates that ultimately the villagers took the two of them to the Police and that a decision was taken that they should be married and the marriage was solemnized in the nearby Mandir. Thereafter, the couple spent about two weeks with the sister of the deceased by the name of Rangamma at Kelagote Village. On the evening of the incident, the accused and the deceased were returning to Hiremyagalakere Village and P.W. 5-Gangawa who is a material witness states that she saw them entering a sugarcane field close to the village. She also states that the deceased expressed a desire to talk to her and that the accused did not permit this. P.W. 5 states that she informed one Manjappa about what she saw but we are not concerned with this aspect because this person has not been examined at the time of the trial. P.W. 5 thereafter informed P.W. 2-Shanthawa who is the mother of the deceased that she had seen them entering the sugarcane field. The couple did not come to the village on that night and it was only on the next day that the body of the girl was found in the field. It is alleged that in the course of investigation, a saree and Mangalashtra belonging to the deceased and allegedly removed from her person were recovered at the instance of the accused. The accused was charged with having committed the murder of Nagarathamma and was put on trial before the Sessions Court. The learned Trial Judge after analysing the various heads of evidence on record concluded that the charge has been established. The accused was accordingly convicted for the offence punishable under Section 302, Indian Penal Code and it was directed that he should undergo R.I. for life. The accused is in custody and the present appeal assails the order of conviction and sentence.

2. Mr. Shariff, the learned Counsel who represents the appellant has seriously attacked the validity of the conviction. As we shall presently point out, his challenge is more on point of law than on the factual aspect. He has taken us through the evidence on record and we shall briefly summarise the contention raised by him and our findings thereon. In the very first instance, he points out to us that this is a case of circumstantial evidence insofar as there are no direct eye-

witnesses to the incident. It is his submission that the background namely what had transpired prior to the couple getting married and which is relied upon by the prosecution as a motive for the commission of the offence is in fact no ground on which that circumstance can be used against the accused. According to the learned Counsel, the young couple were friendly with each other which was why they had even run away and he states that when they were brought to the Police Station, it is very clear that they had themselves expressed the desire to get married which was why they were taken to the Mandir and were married. He points out that approximately two weeks had elapsed thereafter and that the prosecution has not brought on record a single piece of adverse evidence to indicate that there was any hostility between the accused and the deceased. On the other hand, the learned Additional State Public Prosecutor has vehemently submitted that the background of the accused indicates that his character was not exemplary and he submits that it is very clear that the accused was virtually forced to marry the deceased because of the pendency of the criminal cases and the pressure put by the villagers. Without attributing any disrespect to the deceased, he has advanced a submission that there are references in the record to indicate that the deceased girl was also a rather willing participant in not only these incidents but some other ones and he submits that in totality, all this evidence very clearly indicates that the accused may have been forced to marry the deceased but that it was abundantly clear that he was virtually looking for an opportunity to get rid of her finally.

3. We have evaluated the rival submissions and the evidence under this head and we find that in the absence of the prosecution having brought on record any positive evidence in support of the contention that after the marriage the accused was ill-disposed towards the deceased or that he was hostile to her, that it is not permissible to embark upon conjecture and conclude that such a situation existed. What really clinches the issue is the fact that admittedly they had spent as long as two weeks with the sister and if this was the situation, there would certainly have been very clear indications of which Rangamma, the sister would have taken note of. The prosecution has neither brought forward any such evidence nor has Rangamma been examined and we therefore cannot assume that anything was amiss. On the other hand, from the fact that they stayed together at Rangamma's

house for about two weeks and that they were making attempts to come back to the village together, are indications that the situation between the couple must have been normal. We emphasise the fact that before an adverse inference can be drawn under this head namely the head of motive, that there must be very clear-cut and unambiguous evidence before the Court both of which are absent. Under these circumstances, the motive that is alleged by the prosecution cannot be held to have been established.

4. The strongest circumstance that has been alleged against the accused is the fact that he was last seen together in the company of the deceased by P.W. 5. The evidence of P.W. 5 has been considered by us and even though the appellant's learned Counsel has attacked this evidence by pointing out that Manjappa should have been examined to corroborate the fact that P.W. 5 had in fact seen the accused, we see no reason why that evidence can be called into question. P.W. 5 is a villager. She has given evidence in a straight forward manner and this evidence has stood the test of cross-examination and the learned Additional State Public Prosecutor is justified in pointing out that the evidence is both reliable and acceptable. It is also clear from the evidence of the mother P.W. 2 that she was informed of the couple going to the sugarcane field of P.W. 5. It is true that the examination of Manjappa would have added greater support to this evidence but in the absence of that witness, we still hold that there is sufficient material on record to accept this circumstance namely that the deceased and the accused were last seen together. This circumstance assumes greater importance because even though the appellant's learned Counsel has pointed out to us from the medical evidence that there is no definite nexus as to when exactly the death took place, we have pieced together the various heads of evidence and we find that there is no doubt about the fact that the death took place shortly after the time when the deceased was seen entering the sugarcane field. In this background, we have no hesitation in holding that this particular circumstance is proved.

5. The prosecution has then alleged that the accused is supposed to have taken away the saree and the Mangalashtra from the person of the deceased and that these were recovered at his instance. Though the appellant's learned Counsel has challenged this evidence, we have scrutinized it carefully and we find that the

recovery of the saree and the Mangalasutra is held to be established. The issue does not stop there because the appellant's learned Counsel points out to us that before the prosecution can rely on this circumstance as an incriminating circumstance, that it is necessary that these items be identified and that a nexus between the deceased and these two items be established. Learned Counsel is absolutely right in law as far as this aspect of the case goes and we do find that unfortunately, the items in question have not been identified and established as belonging to the deceased. Having regard to the legal position, we go a step further and need to record that the accused and the deceased were husband and wife and consequently, if a saree or an item of jewellery belonging to the wife is recovered from the house at the instance of the husband, this would not ipso facto constitute an incriminating circumstance because the husband is not a stranger or an outsider. Had the prosecution established that these items were on the person of Nagarathamma at the time when the offence was committed, then the complexion of the case would have changed completely. That identification has not been done nor has any evidence been put forward to indicate that the items were on the person of the deceased at or around the time when the offence has taken place. In the absence of such a head of evidence, this material is of no avail to the prosecution. The prosecution undoubtedly relies heavily on the evidence of the mother-P.W. 2. The appellant's learned Counsel has pointed out that there is something strange about the evidence of this witness. He has also pointed out to us certain other aspects but we do not propose to rely on these because admittedly the mother-P.W. 2 is not a witness to the incident and whatever evidence she has given is on the basis of information gathered from P.W. 5 and the background of the case which is only supportive evidence. Even if the evidence of P.W. 2 is generally accepted, it does not carry the prosecution case much further. We need to reiterate that what is crucial in this case is the question as to whether the prosecution has adduced conclusive circumstantial evidence to establish a nexus between the offence and the accused. We have also taken note of the fact that even as far as the complaint lodged by P.W. 2 is concerned, that there is a discrepancy between the version put forward by her and the complaint in the Police Station where the complaint was in fact lodged.

6. An analysis of the entire evidence indicates that undoubtedly, one circumstance is conclusively established as against the accused. The learned Additional State Public Prosecutor submitted that it is a very strong circumstance. It indicates that the accused and the deceased were seen together very shortly before the deceased was murdered and the submission is that in the absence of any explanation from the accused as to when she had parted company or a plausible explanation as to how the deceased could have met with her end, that this evidence is sufficient to sustain a conviction. As far as this aspect of the case goes, we need to take note of the fact that the law with regard to circumstantial evidence is well-settled and well established and that the law requires for very good reason that there must be a chain of circumstances or web of circumstances as the Supreme Court has repeatedly put it, that each of the circumstances or links in the chain must be established conclusively and that taken together they must point at one and only one inference namely the guilt of the accused. The Courts have gone to the extent of pointing out that while dealing with circumstantial evidence, it is unsafe to convict even if some circumstances are proved but one or more vital links are weak. The whole concept of insisting on the chain of circumstances is in order to rule out totally and completely any other possibility. It is for this reason that the Courts insist on the entire chain of circumstances being established.

7. We have before us an unusual situation where only one circumstance is conclusively established. We have no hesitation in holding that this one circumstance does lead to not only suspicion but a grave suspicion but the law being what it is, a conviction would not be permissible either on the basis of suspicion or on the basis of a single circumstance or a single link.

8. In the light of the aforesaid situation, we find it impossible to sustain the conviction recorded against the appellant by the Trial Court. The appeal accordingly succeeds. We set aside the conviction and sentence recorded against the appellant and direct that since he is in custody, he shall be set at liberty, forthwith, unless he is required in connection with any other offences.