

Eswarappa Alias Doopada Eswarappa Vs. State of Karnataka

Eswarappa Alias Doopada Eswarappa Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/387643

Court : Karnataka

Decided On : Nov-18-2003

Reported in : ILR2004KAR1033; 2004(3)KarLJ67

Judge : S.R. Bannurmath and ;Mohan Shanthanagoudar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 309; [Evidence Act, 1872](#) - Sections 3 and 45

Appeal No. : Criminal Appeal No. 623 of 2001

Appellant : Eswarappa Alias Doopada Eswarappa

Respondent : State of Karnataka

Advocate for Def. : H.V. Ramesh, High Court Government Pleader

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

Disposition : Appeal dismissed

Judgement :

S.R. Bannurmath, J.

1. This appeal is filed challenging the judgment of conviction dated 11th April, 2001 passed by the learned Additional Sessions Judge, Shimoga, in Session Case No. 114 of 1996 convicting the accused/appellant for the offence punishable

under Section 302 of the IPC and sentencing him to undergo imprisonment for life and fine of Rs. 500/- with default sentence.

2, The brief facts as per the prosecution case are as follows.-

The accused Eswarappa alias Doopada Eswarappa and the deceased were married 3 years prior to the incident and staying at Kuppagadde Village in Sorab Taluk. According to the prosecution on 18-5-1996 during the night time the accused strangled his wife-Lalitha in the house and thereafter hanged her dead body with a plastic wire to the roof and as such has been charged for the offence punishable under Section 302 of the IPC. In this regard the accusation of the prosecution is that the accused was treating the deceased with cruelty to secure gold chain, cycle etc., from her parents as well as suspecting her of committing theft of rice from his house and selling it to others. On 19-5-1996 as per the evidence of the prosecution the villagers contacted the Anavatti Police on phone and informed as to the death of Lalitha by hanging and suspecting the hand of the accused in the death. On receipt of this phone, P.W. 20-Rathnakara, P.S.I, along with a Constable goes to the village wherein he finds Vasudeva Naika-the father of the deceased person and who presented a written complaint/first information as per Ex. P. 10. This complaint is sent to the jurisdictional Police by P.W. 20 and on receipt of the same P.W. 15-the AS.I., registered a case in Crime No. 35 of 1996 for the offence punishable under Sections 302, 304B and 201, IPC, against the accused and investigation is taken up.

3. During the investigation, all the necessary mahazars and proceedings including inquest, spot mahazar are drawn in the presence of the witnesses and the relatives, photographs of the dead body as per Exs. P. 5 to P. 5(c) are taken, body is sent for autopsy, statements of various witnesses are recorded. After completion of the investigation and on receipt of the records and reports, accused is charged for the offences punishable under Sections 302 and 498A of the IPC.

4. On committal and after framing of the charges, as the accused denied the charges and claimed to be tried, he was tried in S.C. No. 114 of 1996.

5. The prosecution has examined in all 21 witnesses, got marked Exs. P. 1 to P. 16 and M.Os. 1 to 11. Apart from the total denial of the entire prosecution case and especially the incriminating circumstances as per spoken to by various witnesses, the accused to question No. 27 has stated thus.

'Qn. 27

How you got anything more to say in this case?

6. Neither the defence evidence is lead nor any documents are marked on behalf of the accused. On appreciation of the entire evidence though the Trial Court found that the prosecution has failed to bring home the charge under Section 498A of the IPC, beyond reasonable doubt, gave benefit of doubt, found the accused guilty of the offence under Section 302 of the IPC, simpliciter and as such convicted him and sentenced him to undergo imprisonment for life with fine and default sentence. Hence, the present appeal.

7. Sri Ravi Deshpande, learned Counsel appearing for the appellant challenging the judgment of conviction inter alia contended that the judgment of conviction is contrary to law and evidence on record and mainly based on presumptions and surmises on the part of the learned Sessions Judge. He contended that in the absence of any apparent motive on the part of the accused being established by the prosecution, possibility of the deceased committing suicide because of certain developments few days prior to the incident could not have been ruled out by the Trial Court. In this regard it is contended that the deceased was found to be stealing rice from the house of the accused as well as from other neighbours and in this regard in fact when caught there was panchayat scheduled to be held few days thereafter and as such the possibility of the deceased committing suicide either out of shame or out of disgust towards her is writ large. He contended that looking into the position of the body as disclosed in the inquest, spot mahazar and visually as per the photographs, the signs of forcible hanging are totally absent. It is contended that if the accused had tried to hang the deceased, she ought to have fought back to save her life and in this regard necessarily there would have been certain marks on resistance on her person. Absence of all these according to the learned Counsel indicate that it was simple suicide committed by the

deceased. It is submitted that as the medical evidence is oscillating, the same should not have been made basis by the Trial Court to find the accused guilty. On these among other grounds it is contended that the judgment, of conviction passed by the Trial Court is illegal and liable to be set aside giving benefit of doubt to the accused especially when the Trial Court itself found that the alleged motive for murder over dowry harassment has been negated by the Court below.

8. On the other hand the learned High Court Government Pleader argued in support of the prosecution case and the finding of the Trial Court.

9. Out of the 21 witnesses examined by the prosecution, P.W. 1-Puttamma is the mother, P.W. 2-Durgamma is the grandmother, P.W. 7-Anandanaika is the brother of the deceased. P.Ws. 3, 4, 5 and 6 are the neighbours of the accused and deceased who are projected as witnesses to speak about the motive aspect. In this regard, the prosecution has also examined P.W. 8 the stepmother of the accused. P.Ws. 9 to 12 and 19 are the mahazar witnesses, P.W. 13 is the doctor who conducted the autopsy and gave his report as per Ex. P. 8, P.W. 14 is the Taluk Executive Magistrate who has conducted the inquest proceedings and P.Ws. 15, 16, 17, 20 and 21 are the members of the investigation team. P.W. 18 is the photographer who has taken the photographs of the dead body in hanging position as per Exs. P. 5, P. 5(a) to P. 5(c). The death of Lalitha-wife of the accused on 18-5-1996 during the night is not in much dispute. Similarly, the deceased being the wife of the accused is also not controverted. However, in view of certain questions raised by the learned Counsel for the accused, it is to be seen whether the death was homicidal or suicidal and if homicidal whether it is the accused, who caused the death.

10. After going through the evidence of the prosecution witnesses especially P.Ws. 1 and 5, the mother of the deceased and the neighbour shows that there was something wrong in the relationship of husband and wife and the accused was often thrashing the deceased. The trend of evidence of these witnesses as elicited in the examination-in-chief as well as cross-examination, indicates that there was a suspicion as to the deceased disposing of the rice from her house by selling it outside to others possibly without the knowledge of the accused as well

as committing theft in the house of others and giving it to P.W. 1. On perusal of the entire evidence though we feel that the motive aspect is not very clear but it indicates the possibility of some ire on the part of the accused. We are reminded of the pronouncement of the Apex Court in similar situation in the case of State of Himachal Pradesh v. Jeet Singh : 1999 CriLJ2025 , the Honble Supreme Court so far as the motive is concerned has held thus.-

'No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended'.

11. Taking cue from the observation and principles laid down by the Apex Court in the aforesaid pronouncement, in our view possibility of ire on the part of the accused being enraged towards the conduct of the deceased is apparent. It is worthwhile to note that it is in the cross-examination of the prosecution witnesses themselves, the accused has tried to elicit or at least suggest that the deceased was committing theft of rice from her own house as well as from the house of neighbours and disposing it clandestinely without the knowledge of the accused and in this regard when she was caught, there was panchayat fixed for making enquiry which was to take place within short time in or around the time of incident. These suggestions themselves show that there was every possibility keeping in view the normal way the mind of a human being works, the suggestions put to the witnesses, in our view indicates that there was every reason for the accused being dissatisfied with the conduct of the deceased and every possibility of his being angry with her conduct. There is every possibility that out of shame as his name would be tarnished during the panchayat as the deceased was his wife or even getting angry with the conduct of her committing a murder cannot be overruled and

as such we see there is some seed of truth in the allegations of the prosecution as to the motive aspect. This doubt is more strengthened by the clear evidence of P.Ws. 1 and 5.

12. It is to be noted at this stage itself that the possibility of the deceased herself committing suicide because of the event viz., her being caught while committing theft or her conduct being enquired by the village panchayat is also possible and hence, the moot question we have to decide first is whether the death of Lalitha was either suicidal or homicidal in nature. It is to be noted that the accused though used to be present and in company of the deceased as a husband has flatly denied his presence in the night. Of course he has not established the alibi claim by him viz., that his leaving the house in the afternoon of 17-5-1996 to attend the marriage of one Shivappa of the same village and returning only in the morning of 18-5-1996. Though no evidence has been lead even to show the possibility of accused attending the marriage of said Shivappa (not examined) we have to independently see whether the death was suicidal or not. As such we are left with the evidence of only the autopsy Doctor. In this regard the evidence of the autopsy Doctor-Dr. Prakash-P.W. 13 is very important. This Doctor has conducted the autopsy on 20-5-1996 at about 9.00 a.m. and he has noticed presence of two ligature marks on the neck of the deceased. One ligature mark was the primary mark around the neck surrounding completely resulting in fracture of thyroid cartilage and the other mark was due to hanging of the body by plastic wire. This Doctor has specifically stated that primary mark viz., the ligature mark surrounding the entire neck was ante-mortem in nature and the other ligature mark was post-mortem. Taking into consideration these two ligature marks one ante-mortem in nature and the other post-mortem, the expert has concluded that the deceased was first strangled and thereafter her dead body was hanged to give an impression of suicidal hanging by the deceased herself. Nothing damaging these definite experts opinion has been elicited in his cross-examination. We have also looked into the photographs to see the position of the dead body and especially the ligature marks on the neck of the deceased. Ex. P. 5(b)-the photograph clearly indicates one ligature mark completely surrounding the neck and the other caused due to hanging of the body which is post-mortem in nature according to the Doctor.

13. In this regard we have also looked into the well-accepted book -Medical Jurisprudence and Toxicology by Dr. K.S. Narayan Reddy. The author has while making distinction between the suicidal hanging and post-mortem hanging has noted that to affirm as to whether the hanging is suicidal or post-mortem hanging one has to look into the position of the body, possibility of disturbance on the ground, suspension of the body in absence of any platform or any chair, stool etc., will be most unusual in the cases of suicide. Similarly unusual position of the body namely, where the parts of the body touched the ground is also indicative of diagnostic of suicide or post-mortem hanging. In the present case as we see from the photographs, the beam to which the rope is tied which is alleged to be used for hanging of the body is on very high level. No doubt a ladder is kept next to the body but looking to the position of the body vis-a-vis, the ladder, it appears to us that the same has been kept for show or to indicate possibility of the suicide. But, what we are mainly concerned is the two ligature marks. If a person has committed suicide there is no possibility of having two ligature marks at two different positions on the neck. As noted earlier one ligature mark which is ante-mortem in nature is surrounding the neck in its entirety and as such ligature mark cannot be possible if the suicidal hanging as indicated in photographs. On the other hand we find the second ligature mark corresponding to the hanging noose and this mark as per the medical experts evidence is definitely post-mortem in nature. If a person commits suicide by hanging there is absolutely no possibility of getting the ligature marks one ante-mortem in nature and the other post-mortem in nature. Taking into consideration these aspects especially the evidence of the Medical Officer, it leaves no doubt in our mind that the deceased was first killed/murdered by strangulation by surrounding the neck with the plastic wire and then after her death her body was hanged to show to the others the possibility of suicidal hanging. On the face of such clear medical evidence, we find that the theory of the prosecution that the deceased was strangled and killed first and then her body was hanged, is certain than the alleged attempt on the part of the accused to show that she committed suicide.

14. Once we hold that the death of Lalitha was homicidal being by strangulation and there is an attempt to make it appear as suicidal hanging, the immediate next question would be who did it.

15. As indicated it is only the accused against whom the accusing finger is pointed out by the prosecution evidence. Though the accused has tried to take shelter under alibi of not being in the house, he has failed to establish the same even by preponderance of possibilities. Even no simple suggestion to that effect has been put to any of the prosecution witnesses. Hence, the only conclusion which we can arrived at is that as normal course, the accused must have been present in his house in the evening or night of 18-5-1996. Once this aspect is established coupled with the possible ire or motive on the part of the accused, in the absence of any explanation on the part of the accused as to what exactly happened to his wife and why. As observed by the Apex Court in the cases of *State of Tamil Nadu v. Rajendran* 2000 SCC (Cri.) 40 and *Damodar v. State of Karnataka* : 2000 CriLJ175 , this non-explanation or untrue or false explanation becomes the additional link in the chain of circumstances put forth by the prosecution to strengthen the noose around the neck of the accused.

16. After giving our anxious considerations to all these aspects, it leaves no doubt in our mind that it was the accused who had every motive, opportunity to do away with the life of the deceased wife, and did the same in the night of 18-5-1996 and tried to make it appear for the general public as if the deceased has committed the suicide. Hence, we find that the conclusion arrived at by the Trial Court viz., accused being guilty of the offence under Section 302 of the IPC is based on well-founded considerations. Of course the accused ought to have been charged with and convicted also for the offence punishable under Section 201 of the IPC. Unfortunately neither charge has been framed nor the Trial Court has bestowed its attention on the same and hence, we need not trouble ourselves much about the offence punishable under Section 201 of the IPC.

In the result, for the reasons stated above, we find that the appeal is devoid of merits and hence, the same is liable to be dismissed upholding the judgment of conviction passed by the Trial Court.