

**The State of Karnataka Vs. B. Ramesh**

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**Court :** Karnataka

**Decided On :** Apr-21-2006

**Reported in :** 2006CriLJ3137; II(2006)DMC720; 2006(4)KarLJ635

**Judge :** Chidananda Ullal and ;V. Jagannathan, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302, 304B and 498A

**Appeal No. :** Criminal Appeal No. 331/2000

**Appellant :** The State of Karnataka

**Respondent :** B. Ramesh

**Advocate for Def. :** Pushpakantha, Adv.

**Advocate for Pet/Ap. :** B.V. Pinto, Addl. S.P.P.

**Disposition :** Appeal dismissed

**Judgement :**

**V. Jagannathan, J.**

1. This appeal by the State is directed against the judgment and order of acquittal dated 15.12.1999 passed by the Learned Sessions Judge, Bangalore, acquitting the respondent herein of the offences punishable under Sections 498-A, 302 and 304-B of the IPC.

2. The prosecution case in brief is to the effect that the respondent herein got married to Stella Mary on 11.3.1996 and at the time of marriage a sum of Rs. 10,000/- was given as dowry Rs. 5,000/- worth clothes and a gold ring was also given. The couple lived happily for sometime, It was thereafter, the in-laws as well as the accused herein began to ill-treat the deceased Stella Mary and demanded that more dowry should be brought from her parents' house. The couple also had a four months' child at the time of incident in question. On 13.1.1998, at about 5.45 p.m. Stella Mary was admitted to Victoria Hospital, Bangalore, with burn injuries and she succumbed to the injuries on 16.1.1998 at about 5.40 a.m. PW 10 Dr. Rama Jayaram sent the death information as per Ex. P-6 to the police. PW9 Abdul Khayam, the Police Inspector of K.G. Halli Police Station took over further investigation from ASI Rachaiah and after conducting the spot panchanama and recording the statement of witnesses, he got the offences converted into one under Section 302 of IPC and sent the FIR to Court and requested the Tahsilddar to submit the report. Further, the investigation was taken over by one Doddamunibasappa. In the course of the investigation, the postmortem report was collected as per Ex.P-8.

3. At the trial, prosecution examined PWs. 1 to 10 and got marked the documents Exs. P-1 to P-8 and Material object MO, 1 was also produced. The stand of the accused was one of total denial in 313 statement and he chose to lead no evidence in his defence.

4. The Trial Court after appreciating the evidence on record came to the conclusion that the prosecution had miserably failed to prove the case beyond all reasonable doubt and the very evidence of the doctor PW 10 Smt. Rama Jayaram was to the effect that deceased Stella Mary gave her statement before the doctor stating that it was due to accidental stove burst, the saree worn by her caught fire and this statement of the deceased was recorded by PW10 in the accident register kept in the hospital and the xerox copy of which is at Ex.P-7 produced during the trial and marked during the cross-examination. The Trial Court disbelieved the testimony of PWs. 1 to 6 who were the material witnesses and thus, the order of acquittal came to be passed in favour of the respondent.

5. While assailing the above said judgment and order of acquittal in this appeal after grant of leave, the Learned State Counsel Sri. B.V. Pinto submitted that unfortunately, in the instant case, the investigation has been perfunctory and the prosecuting agency has also not conducted the case properly and even the Trial Court Committed serious errors' in placing reliance on Ex. P-7 and thus, there has been miscarriage of Justice. Apart from this, it was fairly submitted that the PSI Rachaiah who is said to have recorded the dying declaration of the deceased was not examined and so also the doctor in whose presence the statement of the deceased was recorded, was not examined and even the dying declaration which was part of the record of the case was also not marked during the trial and therefore, there has been total carelessness on the part of the police and the prosecuting agency in not conducting the case properly and that too a case like the one involving dowry death.

6. We have examined the evidence on record, in the light of the submissions made by the learned State Counsel and we find that the entire investigation in this case has not been properly conducted by the concerned investigating Agency. It is clear from the very fact that PW1 being the mother of the deceased has deposed in her evidence that when she went to Victoria Hospital to enquire with her daughter, the deceased told that the accused had set fire to her and ran away from the house. This witness has further deposed in the course of cross-examination that the deceased did not make any statement before PW 10 to the effect that she suffered burn injuries while cooking, due to accidental stove burst. PW2 who is the brother of the deceased has deposed to similar effect. PW3 Sagaya Mary is neighbour to the deceased and she also has stated that the accused was harassing the deceased by asking her to bring more money and PW3 only came to know from others that the accused had fought with Stella Mary. PWs. 4,5 and 6 do not support the prosecution case to any extent. PW7 speaks to the inquest report Ex. P-4 and PW8 is the Mahazar witness to the spot panchanama Ex. P-5. PW9 is the PSI who did part of the investigation. PW 10 is the doctor who has deposed to the effect that the deceased Stella Mary made statement before her with regard to the stove burst and burn injuries being caused to the deceased.

7. Thus, It is clear from the above evidence on record that the evidence of PWs. 1 and 2 who speak to the dying declaration made by the deceased has not been supported by the police officer Rachaiah who recorded the same, because the said Rachaiah himself has not been examined. The doctor before whom the statement of the deceased was recorded as per the FIR dated 14.1.1998 has also not been examined. Thus, there is no convincing material placed to support the testimony of PWs. 1 and 2 that the deceased made dying declaration implicating the accused. In the absence of two important witnesses viz., the police officer Rachaiah, who recorded the statement of the deceased and the doctor who were present at that time, being examined as witnesses in this case for the reasons best known to the prosecuting agency, the only evidence that is placed on record is of PW 10 Dr. Rama Jayaram. The evidence of doctor PW 10 gives another picture of the incident and she has stated that the deceased was admitted to the hospital with the history of stove burst and due to that burn injuries were caused to the deceased and the statement given by the deceased was recorded in the accident register No. R-55 at page 184-185 and the xerox copy of the said register is at Ex. P-7 and it is signed by the doctor. The doctor has deposed that the deceased was in a fit condition to make statement, and it was the voluntary statement of the deceased that she suffered burn injuries due to stove burst thus the only evidence placed by PW 10 indicates that deceased died due to injuries caused on account of stove burst.

8. If the prosecution case is really one of the accused having set fire to the deceased, it was incumbent on the part of the investigating agency to have placed on record the evidence of the police officer Rachaiah as well as the Medical Officer who were present at the time of recording the dying declaration. This is a serious lapse on the part of the investigating agency since the evidence of the doctor PW 10 was to the effect that the deceased sustained injuries due to stove burst. When the deceased was taken to the hospital soon after the incident, the I.O. concerned ought to have visited the scene of offence and ought to have seized the broken pieces of the stove, if at all the theory put forward by PW 10 is the version given by the deceased. No such effort was made by the police officers who conducted the investigation in this case and even the spot mahazar Ex. P-5 does not mention anything about the presence of either the stove or broken pieces

of stove to indicate that there was stove burst at the relevant time. This is a serious lapse on the part of the police officers and it is an elementary knowledge that when an incident is said to have taken place in a particular manner, the immediate action to be taken by the police is, to go to the spot in question and verify as to whether there was really a stove burst incident and if so, whether the stove was found at the place of incident. Ex. P-5 is silent on all these aspects and that should have provided the clue to the police to direct their investigation on the lines of dying declaration said to have been made by the deceased and therefore, the police as well as the prosecuting agency ought to have ensured that the ASI Rachaiah who is said to have recorded the statement of deceased and the Assistant Professor of Victoria Hospital, who was present at that time ought to have been examined without fail. Alas! No such thing has happened in the instant case.

9. Even the Public Prosecutor who conducted the case has not done his duty true to his salt. No effort was made on the part of the public prosecutor to have got the two important witnesses viz., Rachaiah the ASI of the K.G. Halli Police Station and the Assistant Professor of Plastic Surgery of Victoria Hospital summoned to the court to depose before the court with regard to dying declaration made by the deceased. The prosecution case, therefore, suffered serious blows on account of these lapses.

10. Even the Trial Court on its part has contributed towards the case ending in acquittal inasmuch as the Trial Court has relied on Ex. P-7 which is a xerox copy of the accident register to be marked in the evidence of PW 10 that too during the cross-examination. The Trial Court did not verify as to whether Ex. P-7 was the true copy of the original, by comparing the same with the original record and it did not enquire into the question as to the proper custody or the source of Ex. P-7, or as to the authenticity of the said document.

11. Yet, another lapse we notice in the instant case, is that though the document purporting to be the dying declaration is said to have been given by the deceased, and it having become a part and parcel of the record of the Trial Court, no effort was made to get that dying declaration marked during the course of the trial. Thus,

the prosecution lost valuable evidence in the form of dying declaration having not been placed and marked during the trial.

12. On the whole, the only positive evidence which is placed on record and marked through PW 10 Dr. Rama Jayaram is Ex. P-7 and the said document does not implicate the accused either with harassment given to the deceased on account of demand of dowry or any ill-treatment given to the deceased by her husband. Therefore, the Trial Court basing its reasoning solely on Ex.P-7 has acquitted the respondent of all the charges levelled against him.

13. In the light of the foregoing reasons, the investigating agency as well as the prosecuting agency having failed to place necessary evidence before the court, though available, but not placed and thus, has contributed to the case ending up in acquittal. At the stage, sitting in appeal over a case which ended in acquittal almost 7 years back and no effort being made by the prosecuting agency at any stage of the Trial proceedings to secure the important witnesses viz., ASI Rachaiah and the medical officer, who were present during the dying declaration made by the deceased, we are left with no other option than to express our displeasure over the manner in which the entire case has been handled right from the inception.

14. We do hope that the observations made above would open eyes of the concerned authorities, particularly the Commissioner of Police and we are of the considered opinion that the Commissioner of Police will have to order an enquiry to find out the reasons for the lapses in the investigation and we also direct the Director of Public Prosecutions to examine the records of this case in the light of our observations and initiate necessary enquiry against the concerned Public Prosecutor for not discharging his duties in proper manner.

15. We part with this case with the hope that in future all the concerned agencies will take necessary care and discharge their duty with an utmost responsibility to ensure that miscarriage of justice never takes place and ensure that aim of criminal justice system to see that the really guilty persons do not escape from punishment, becomes, a reality.

16. In the result, we are left with no other option than to confirm the Trial Court judgment and order of acquittal for the reasons aforementioned and accordingly, the State appeal stands dismissed.

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