

BASAVARAJA & ORS. A

v.

STATE OF KARNATAKA
(Criminal Appeal No.1 of 2002)

SEPTEMBER 22, 2008

[DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND G.S.
SINGHVI, JJ] B

Penal Code, 1860:

s. 302/34 – Prosecution of accused persons, all members of a family, for causing death of wife of one of the accused – Prosecution witnesses stating that accused poured kerosene on the person of victim and set her to fire – Medical evidence pointing out the cause of death as asphyxia by smothering, and burns to be post mortem – Trial Court finding evidence of prosecution witnesses not reliable and cogent – Acquittal by trial court – Conviction by High Court – HELD: Evidence of doctor clearly shows that burns were not ante mortem in nature but were post mortem – Charges framed and examination of accused u/s 313 Cr.PC was on totally unfounded premises – Conviction recorded by High Court set aside – Evidence – Practice and Procedure – Framing of charge – Code of Criminal Procedure, 1973 – s.313. C D E

The appellants-accused, two brothers, their sister and their parents, were prosecuted for commission of offence punishable u/s 302/34 IPC on the allegations that they assaulted the wife of A-1, dragged her inside the cattle shed, poured kerosene on her person and set fire to her, causing her death. The trial court found that the evidence of PW-7, the doctor who conducted the autopsy, belied the version of PWs 2 and 3; that there was considerable delay in lodging the FIR and that the evidence of PWs 2 and 3, the brother and the sister-in-law of the deceased respectively, was not reliable and cogent. Accordingly, it F G

A acquitted all the accused. But, the High Court convicted them.

B In the instant appeal filed by the accused, it was contended for the appellants that the charge framed indicated that the cause of death was due to burning after pouring kerosene but the evidence of PW-7, the doctor, indicated that the death was due to asphyxia as a result of smothering; that in the examination of the accused u/s 313 Cr.PC the questions related to the cause of death being due to burning and the alleged involvement of the accused therein; that the High Court did not keep in view the parameters relating to appeal against acquittal and erred in holding that the evidence of the doctor was not in serious contradiction with that of PWs 2 and 3.

D Allowing the appeal, the Court

E HELD: In the post-mortem report, PW 7 the doctor has categorically stated that the death was due to smothering. The evidence of the doctor clearly shows that the burns were not anti-mortem in nature but were post mortem. This part of the evidence of the doctor has not been shaken. In fact, the charges were framed on totally unfounded premises and even in the examination u/s 313 of the Code of Criminal Procedure, 1973, with reference to the evidence of PW 7, it was stated that the death was due to smothering. If that to be so, the question of the accused persons having caused the death by burning does not arise. Such casual framing of charge and examination u/s 313 Cr. PC is a disturbing feature. In the circumstances, the conviction as recorded by the High Court is set aside. [para 8-9] [783-A-E]

G CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1 of 2002

H From the final Judgment dated 1.10.2001 of the High Court of Karnataka at Bangalore in Crl. Appeal No. 713 of 1996

K. Rajendra Chowdhary, Rakesh K. Sharma for the Appellants. A

Sanjay R. Hegde and A. Rohan Singh for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court setting aside the acquittal of the appellant as was recorded by learned Sessions Judge, Chitradurga in SC No.82 of 1994. The trial court had acquitted the appellants for charge of commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). B C

2. The prosecution case in a nutshell is as follows:

On 30.4.1994 at about 1 p.m. the appellant herein had assaulted one Smt. Umadevi (hereinafter referred to as 'deceased') with an intention to cause her death, dragged her inside the cattle shed, where the accused No.2 poured kerosene oil on her person and accused No.1 set fire to her after lighting a match stick as a result of which, the said Smt. Umadevi sustained burn injuries and died. The incident in question took place in the house of the accused No.4. The deceased Smt. Umadevi had been married to the accused No.1. Thus, the accused No.1 is the husband of the deceased Smt. Umadevi. The accused No.3 Sarmangamma had been married to the complainant-PW 1 Virupakshappa. Both the marriages were performed at the same place and at the same place. The accused No.1 was not willing to lead a marital life with the deceased Smt. Umadevi on the ground that she was ugly to look at and was of unsound mind. Likewise, the accused No.3 Sarmangamma was also not willing to live with the complainant PW. I practically on the same grounds. Many panchayats were held in this connection to bring cordiality between the above said two spouses. The accused Nos. 1 &, 2 are the brothers and accused No.3 is their sister. The accused Nos.4 & 5 are the parents of the accused Nos.1 to 3. The deceased Smt. Umadevi was the youngest sis- D E F G H

A ter of PW.2. Both PW1 and A1 had refused to stay with their
respective spouses and even police had been approached and
the PSI of the local police station had persuaded them to settle
the matter but nothing useful came out. All these accused per-
sons were residing together in the same house. The deceased
B Umadevi had been telling to PW-3 Jayamma, the wife of PW.2,
whenever she used to go to the house of Umadevi, that she
was being ill-treated and assaulted by the accused on the ground
that she was ugly to look at and was also of unsound mind. The
deceased was also telling to her that she is not being provided
C with proper and adequate food in the house of her in laws. On
the date of the incident, both PWs. 2 & 3 had gone to the house
of the deceased at about 11 a.m. in the morning and when they
tried to enter into the house, they were prevented from doing
so. The accused persons A4 and A5 pushed them out of the
D house and the A1 and A3 had assaulted the deceased who
was crying for help from inside the house. The accused No.5
had bolted the front door from inside. Thereafter both PWs.2 &
3 went near the cattle shed, on the northern side of the house
and saw what was going on inside the house. The accused No.
E 3 told her brother accused No.2 to finish off the deceased and
accordingly, the accused No.2 poured kerosene oil and the
accused No.1 set fire to her. The accused Nos.4 & 5 had abet-
ted the other accused to finish off the deceased. The incident in
question happened in the cattle shed of the house of the ac-
cused persons. The said house of the accused persons where
F the incident in question took place, was located in a very iso-
lated place, away from the village habitation. The cattle shed
was filled with smoke and the deceased fell on the ground after
sustaining the burn injuries. On seeing this ghastly incident both
PWs.2 & 3 went into the village habitation and requested the
G villagers to come to the house of the accused persons, but no
one obliged them by saying that their relationship with the vil-
lagers is not good and cordial. Thereafter, both PWs.2 & 3 re-
turned back to their village at about 10 p.m. and informed the
said occurrence to all their relatives. Thereafter, the complain-
H ant PW-1 along with few others visited the house of the accused

persons by traveling in a tractor belonging to one Panchaiah. A
The dead body of the deceased Umadevi was lying in the cattle
shed. It was completely charred. The inquest proceedings on
the dead body of the deceased were held by the Tehsildar. The
cattle shed, where the incident in question had occurred, formed
part of the house belonging to the accused persons and they B
were in possession thereof.

The trial court found that the evidence of the Doctor PW 7
belied the version of PWs. 2 & 3. There was considerable de-
lay in lodging the FIR and the evidence of PWs. 2 & 3 was not C
reliable and cogent. Accordingly as noted above acquittal was
directed. In appeal filed by the State, the High Court felt that the
evidence of PW 7 did not rule out the veracity of the evidence of
PWs. 2 & 3. There was no serious contradiction between the
evidence of PWs. 2 & 3 on one hand and PW 7 on the other. D
There was no unexplained delay in lodging the FIR. The occur-
rence took place at 11 AM on 30.4.1994 and the FIR was lodged
at 11.45 PM as spoken by PWs. 2 & 3. Though PW 8 in his
cross examination disclosed that the father of the deceased
stated that he had come to know about the death at 6 PM as to
why no complaint was lodged immediately, the High Court did E
not attach much importance to the said evidence. Accordingly,
the trial court was not justified in directing the acquittal.

3. Learned counsel for the appellant submitted that the High
Court erroneously held that the evidence of PW 7 was not in
serious contradiction with the evidence of PWs. 2 & 3. It was F
pointed out that the charge as framed indicated that the cause
of death was due to burning after pouring kerosene, but the evi-
dence of PW 7 indicated that the death was due to asphyxia as
a result of smothering. In the examination under Section 313 of
the Code of Criminal Procedure, 1973 (in short the 'Code') G
question nos. 61 and 62 relate to the cause of death being due
to burning and the alleged involvement of the appellant in the
same.

4. It was also submitted that the parameters relating to H

A appeal against acquittal have not been kept in view by the High Court.

B 5. In support of the appeal learned counsel for the respondent-State submitted that the ocular evidence has to get primacy over medical evidence. Merely because some hypothetical opinion was given by the PW 7, that cannot be a ground to doubt the veracity of the evidence of PWs 2 & 3. It was also submitted that there was no delay in lodging the FIR.

C 6. The charges framed against the appellant read as follows:

D "That you accused Nos. 1 to 5 in furtherance of common intention of you all, on 30.4.1994 at about 1.00 p.m. near the house of you A1 malige Basappa situated in Sasalu village of Holalkere Taluk, assaulted Umadevi with the intention of causing her death and dragged T. Umadevi inside the cattle shed and you accused No. 2 Prabhudev poured kerosene oil on her and you accused No.1 set fire to her with the help of match stick and on account of which she sustained burn injuries and died and as such you all
E accused persons have committed the offence of murder punishable under Section 302 read with Section 34 IPC"

7. In the examination under Section 313 of the Code the following questions were put to the accused persons:

F "61. He has further stated that the said injuries were post mortem in nature and bloody froth was oozing from both the nostrils and tongue was partially protruding and cheeks clenched and swollen and teeth were intact and rigor mortis was well established all over the body. What have you got
G to say?"

H 62. He has further stated that the death was on account of asphyxia as a result of smothering and the death was about 6 and 36 hours prior to the conducting of post mortem examination and that Ex.P6 is the post mortem report in this behalf. What have you got to say?"

8. In the post-mortem report also the Dr. PW 7 has categorically stated that the death was due to smothering. The evidence of the Doctor clearly shows that the burns were not anti-mortem in nature and were post mortem. This part of the evidence of the doctor has not been shaken. In fact, we are dismayed to find that the charges were framed on totally unfounded premises and even in the examination under Section 313 of the Code, with reference to the evidence of PW 7 it was stated that the death was due to smothering. If that to be so, the question of the accused persons having caused the death by burning does not arise. Such casual framing of charge and examination under Section 313 of the Code is a disturbing feature.

9. In view of what has been stated, the inevitable result is that the appeal has to succeed, the conviction as recorded by the High Court is set aside.

10. The bail bonds of the accused persons for grant of bail in terms of order dated 22.4.2002 stands discharged.

R.P.

Appeal allowed.