NARENDRA

v.

STATE OF KARNATAKA

Criminal Appeal No. 1502 of 2007

MAY 5, 2009

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ]

Penal Code, 1860: *ss.302 and 498-A – Death of wife – Acquittal of husband – However, conviction u/ss.302 and 498-A by High Court – Interference with – Held: Not called for – Trial court lost sight of certain material aspects – Evidence of prosecution witnesses as regard the death of deceased corroborated by medical evidence – Plea of alibi was false.*

The question which arose for consideration in this appeal is whether the High Court was justified in setting aside the judgment of acquittal recorded by trial court, having found the appellant-accused guilty of offence punishable u/ss. 498 A and 302 IPC.

Dismissing the appeal, the Court

HELD: In the instant case, there are certain material aspects which were lost sight of by the trial court but have been noted by the High Court. The dead body was detected in the morning of 14.2.1994. Parents of the deceased informed the police and not the inmates. The parents were informed by neighbours and not by the inmates. DW2 has been disbelieved as he was nearly 70 yeas of age. It was highly improbably that he was in employment as a watchman. The trial court had held that the evidence of PWs. 6 to 8 regarding pressing mark on the neck and injuries on the fore arms of the deceased are not corroborated by the medical opinion. This is factually incorrect. The doctor categorically stated that he was of the opinion that death was due to result of compression of the neck, and the post mortem report was

A **accordingly issued. PW6 stated that second opinion was sought for and then the report was given. The falsity of alibi is an additional link. [Para 5] [589-B-E]**

Trimuch Maroti Kirkan v. State of Maharashtra 2006 (10) SCC 681 – referred to.

B

Case Law Reference

2006 (10) SCC 681 Referred to Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1502 of 2007

C

From the Judgement and Order dated 02.01.2007 of the Hon'ble High Court of Karnataka at Bangalore in Criminal Appeal No. 1048 of 2000.

N.D.B. Raju, Bharthi Raju, N. Ganpathy, for the Appellant.

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Anitha Shenoy, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

E 1. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court setting aside the judgment of acquittal recorded by learned Third Additional Sessions Judge, Bangalore. Learned Sessions Judge have found the accused appellant guilty of offence punishable under Section F 498(A) and 302 of the Indian Penal Code, 1860 (In short the 'IPC').

2. Background facts leading to the prosecution of the appellant are as follows:

On 13/14.2.1994 Smt. Mythradevi (hereinafter referred to G as the 'deceased') was done to death in the bedroom of the matrimonial home of the deceased. According to 'the investigation reports by about 6 a.m. on 14.2.1994 the inmates of the matrimonial home of the deceased learnt about the suspicious death of the deceased. By 9.30 a.m. on the very H same day parents of the deceased came to the matrimonial

home of the deceased after hearing the news of death of their daughter Mythradevi. Father of the deceased (P.W.6) informed the same to the Jurisdictional Police i.e., Srirampura Police Station as per complaint Ex. P.6. Thereafter, first part of investigation under Section 176 of the Code of Criminal Procedure, 1973 (in short the 'Code') proceedings took place at about 2 p.m. on the same date after arrival of Taluk Executive Magistrate Mr. Y.M. Ramachandra Murthy (P.W.1). His inquest report is at Ex. P.1. The investigating agency kept watch over the dead body till the inquest proceedings were conducted, then the dead body was shifted for post mortem to Victoria hospital. As it was late in the night, autopsy was done on the dead body on 15.2.1994 by Dr. S.B. Patil (P.W.2). He gave postmortem report as per Ex. P2 and his opinion is at Ex. P 3. According to him, death was due to asphyxia as a result of compression of neck by human hands.

The parents, sisters and other relatives of the deceased were examined. Their statements revealed after marriage between the parties, deceased started living in the matrimonial home. Parents visited the deceased on 4 to 5 occasions. The last time the parents saw her alive was on 12.2.1994 i.e. about two days prior to her death. During this 12 months period of her stay at matrimonial home, according to kith and kin, deceased was very depressed, unhappy and was even scared to talk to any of kith and kin including the parents, whenever they visited her at matrimonial home. During her visits to the parents house, on enquiry they found the cause of her depression and unhappiness. It was due to improper treatment at the hands of her husband. Her husband was not talking to her. He was not looking after her well and he did not even like her. This was made known to her by coming home at very late hours and not talking to her in the normal way. Last visit of her parents on 12.2.94 to invite the deceased and the respondent for their first wedding anniversary at the parenta1 house of the deceased was rejected by the husband of the deceased. After that, they got the news about her death on 14.2.1994 at about 9 am

The accused was not found at home. Therefore a search to apprehend him commenced. According to P.W. 3 on 15.2.1994 he was apprehended and produced before the Police

A Inspector (P.W. 11) as per the report at Ex.P 4. Prior to that the PSI (PW5) on the basis of the complaint of father of the deceased, registered Crime No. 71/94 for the offence punishable under Section 302 IPC. A spot mahazar was conducted under Ex.P-7, under which M.Os. 6 to 8, blood stained bed sheets, pillow cover and saree of the deceased were seized. During the inquest proceedings personal ornaments of the deceased found on the dead body i.e., M.Os. 1 to 13 including gold bangles and chain came to be seized. Ex. P.8 is the wedding card. Exs. P.9 and 10 are the photographs, which were taken at the time of inquest proceedings to show the exact position of the dead body in the bedroom of the matrimonial home of the deceased. P.W. 7 is the mother of the deceased. P.W. 8 is the elder sister of the deceased, whose statements were also recorded by the Taluk Executive Magistrate. P.W. 9 is the panch witness for the inquest proceedings. P.W. 10 is the witness for spot mahazar (Ex. P.7), but he resiled from the statement given during investigation. P.W.11 is the investigating officer, who took up further investigation from P.W.5 and filed the charge sheet against the appellant-accused.

After completion of investigation charge sheet was filed. Trial court found the evidence not to be cogent and directed acquittal. It is to be noted that eleven witnesses were examined by the prosecution and two witnesses by the defence. Accused took the plea that he had gone to another place for purchase of milk on 13.2.1994 in the morning and returned only on 14.2.1994 at about 10.45 am and therefore he was not in any way involved with the crime.

The High Court by the impugned order set aside the acquittal and found the appellant guilty of offence punishable under Sections 302 and 498(A) IPC.

The High Court found that the analysis made by the trial court was erroneous. The trial court should not have placed reliance on the evidence of DWs 1 & 2 to accept the plea of alibi. Therefore the trial court should not have directed acquittal.

3. In support of the appeal learned counsel for the appellant submitted that two views are possible. On the evidence on record the trial court had taken a view which is a possible one.

Taking into account the limited scope for interference with the judgment of acquittal, the High Court should not have interfered in the matter. Further the alibi should have been accepted. There was no motive, no torture or no demand of dowry. There is no evidence for establishing the accusations either for Section 498A or Section 302 IPC.

4. Learned counsel for the respondent-State on the other hand supported the judgment.

5. In the present case there are certain material aspects which were lost sight of by the trial court but have been noted by the High Court. The dead body was detected in the morning of 14.2.1994. Parents of the deceased informed the police and not the inmates. The parents were informed by neighbours and not by the inmates. DW2 has been disbelieved as he was nearly 70 years of age. It was highly improbable that he was in employment as a watchman. The trial court had held that the evidence of PWs.6 to 8 regarding pressing mark on the neck and injuries on the fore arms of the deceased are not corroborated by the medical opinion. This is factually incorrect. The doctor (PW2) had categorically stated that he was of the opinion that death was due to result of compression of the neck, and the post mortem report was accordingly issued. PW6 has stated that second opinion was sought for and then the report was given. The falsity of alibi is an additional link.

6. In *Trimukh Maroti Kirkan v. State of Maharashtra* [2006 (10) SCC 681] it has been noted as follows:

"The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to

A antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the B house should go unpunished.

If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult C for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also D presides to see that a guilty man does not escape. Both are public duties. (See *Stirland* v. *Director of Public Prosecutions (1944 AC 315)* quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh [2003(11) SCC 271]*.) The law does not enjoin a duty on the prosecution to lead evidence of such character which is E almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence F Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (*b*) appended to this section throws some light on the content and scope of this provision and it reads:

G "(*b*) *A* is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

7. That being so there is no merit in this appeal which is accordingly dismissed.

N.J. Appeal dismissed.