

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 30TH DAY OF JUNE, 2016

PRESENT

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

AND

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

CRIMINAL APPEAL NO. 3547 OF 2011

Between:

Dharmu @ Dharmaraj
S/o Sidaraya Hatalli
Age about 33 years,
Occ: Coolie
R/o Tamba in Indi Taluk

....Appellant

(By R.B.Deshpande & Sharangouda V. Patil, Advocates)

And:

State of Karnataka
Through Indi P.S.

...Respondent

(By Nadagouda, AAG & State)

This CrI.A filed u/s 374 (2) of the Cr. P.C., pleaded to set aside the judgment and order of conviction and sentence dated 18.01.2011 passed in sessions case no. 41/2010 on the file of the Additional sessions Judge at Bijapur. Convicting the appellant/accused for the offences p/u/s 302 and 504 r/w sec. 34 of IPC and the appellant/accused is sentenced to undergo imprisonment of life and he shall also pay a fine of Rs. 50,000/-

for office p/u/s 302 rw sec. 34 of IPC in default, He shall suffer further imprisonment for a period of five months. Further the appellant/accused is no separate sentence is passed against A-1 for the charged offence u/s 504 r/w sec. 34 of IPC.

This appeal coming on for final hearing this day, Narayana Swamy J., delivered the following:

J U D G M E N T

This appeal by the appellant who was Accused No.1 in S C No.41/2010 on the file of I Additional Sessions Judge, at Bijapur. The appellant is convicted and sentenced to undergo imprisonment for life and also to pay a fine of Rs.50,000/- for the offence punishable u/s 302 r/w 34 of IPC and in default, he shall suffer further imprisonment for a period of five months.

2. The brief facts of the case are that on 22.3.2009 at about 9.30 p.m. in front of shop of CW-4 Shankar Pujari @ Benur, the accused enraged for CW-12 Siddamma wife of appellant talking with deceased Basavaraj Vastrad son of complainant, amicably and laughing and they thought that she was having an illicit relationship with the deceased. The accused picked up quarrel, A-2 Jagadev Hattalli held shirt over his chest, A-1 abused in a filthy language and assaulted him with sickle on head and ear and committed murder of the deceased.

3. Indi Police registered the case in Crime No.47/2009 and after completion of investigation, charge sheet was filed and after committal, charges were framed by the trial court. The accused having pleaded not guilty of the charges, prosecution examined 21 witnesses and also got marked 20 documents as Ex.P1 to P20 and 11 material objects. After recording statement of the accused under Section 313 of Code of Criminal Procedure, the trial court has passed the impugned judgment.

4. We have heard the learned counsel for the appellant and the learned Additional Advocate General.

5. The learned counsel for the appellant submits that alleged independent eye witnesses PW-3 and PW-4 have not supported the case of the prosecution and have turned hostile. There are inconsistencies and omissions in the evidence of PW-7, the complainant, fatal to the case of prosecution which the prosecution has conveniently ignored. The prosecution has failed to examine the independent witnesses, though PW-7 spoke that there were 10 to 20 persons. The evidence of PW-8

stating that on the previous day on 22.3.2009 at 8 p.m. there was no power supply and therefore he went towards bus-stand holding a battery falsifies the presence of PW-7 & 8 at the spot. The evidence of PW-9 in stating that her statement adverse to what is stated in the chief is due to confusion, would render the evidence untrustworthy. The evidence of PW-8, PW-9 and PW-15 who were examined to prove motive, while the evidence of PW-8 & 9 is not helpful in their saying that they are not having any personal knowledge about the illegal intimacy and PW-15 has not supported the case of the prosecution and turned hostile partially. Apart from the above, there are inconsistencies in the evidence of PWs-20 and 21, the investigating officers. Therefore, it is the submission of the learned counsel that the court below has committed an error in convicting the appellant and thus prays for allowing the appeal and set him free.

6. On the other hand, the learned Additional Advocate General for the respondent supported the impugned judgment. It is submitted that there is no bar to cite the relations of the victims in a criminal case and equally it is not a rule that their

testimony cannot be relied upon. The court below has carefully considered the materials on record and there is no ground warranting interference with the said judgment of the trial court. Hence, he prays for dismissal of the appeal confirming the judgment of the trial court.

7. Based on the facts and rival contentions of the parties, the point that arises for consideration in the present appeal is, whether the prosecution has proved beyond all reasonable doubt the guilt of the appellant as alleged? Our answer would be in the negative for the following reasons.

8. The prosecution has based its conclusion on the evidence of PWs-7 Shivashankarayya Vastrad, the complainant and PW-8 Gurayya Vastrad, brother of the complainant and uncle of the deceased, PW-9 Girijabai Vastrad, wife of the complainant and mother of deceased, PW-11 Siddalingayya Vastrad, grand father of deceased, PW-13 Channaveer K Dudagi, a police constable who identified MOs-4 to 8 and evidence of the doctor PW-17. As all the witnesses whose evidence is made a

basis except the doctor, are related to the deceased or the complainant, they are interested witnesses, their evidence has to be scrutinized with utmost care and caution, in the absence of support from other independent eye witnesses, who are examined as witnesses, PWs-3 & 4, but turned hostile.

9. PW-7 who is the complainant and father of the deceased has deposed that near the tailoring shop of one Shankar Pujari, he heard the screaming voice and with the help of torch he could see A-2 was holding the shirt collar of his son and he was abusing and A-1 was also abusing and A-1 assaulted on the head and near the left ear with sickle. His son fell in the pool of blood and died on the spot. It was about 9 or 9.30 p.m. when the incident had occurred. The accused committed the murder on account of previous enmity regarding illegal intimacy of deceased with Siddamma, wife of A-1.

10. PW-8 has deposed that there was illegal intimacy between the deceased and wife of A-1. A-1 had sent his wife Siddamma to her parental home and he got married another

wife. On the date of incident he had been to bus-stand with a torch in his hand. When he was returning towards his house in front of the tailoring shop belongs to CW-4, he heard galata voice and he gone there and saw that A-2 was holding shirt-collar of Basavaraj and abusing and A-1 was also abusing. A-1 assaulted with sickle on the head and left ear of deceased. Then the accused left the place on a motor cycle. It was about 9.30 p.m. when the incident occurred. The accused committed murder on account of illegal intimacy with Siddamma. In the cross-examination it is elicited that he left the bus stand at about 5.15 p.m. and that running away is not like going away on the motor cycle.

11. PW-9 mother of the deceased has deposed that her deceased son Basavaraj Vastrad was having intimacy with said Siddamma. It was came to the knowledge of A-1 Dharamaraj. In this regard, Panchayat was convened in the village. On the date of incident, her husband – complainant left the house at about 8 p.m. to grind the jawar in the jawar flourmill. Her deceased son had also gone out. Till 10 p.m. they did not return. She heard that her son Basavaraj was murdered near

the Gram Panchayat office by A-1 and A-2. In the cross-examination she has stated that her deceased son left the house at about 6.30 p.m. her husband left the house at about 6 p.m. Because of variance in the evidence from that of 161 statement, this witness was treated partly hostile.

12. PW-11 is the grandfather of the deceased. He has stated that he received news that in front of the tailoring shop of Shankarjk Pujari Dharma and Jagadevappa committed murder of his grandson Basavaraj by assaulting with sickle. He is an hearsay witness. It is elicited in the cross-examination that he did not tell the police that the accused No.1 and 2 had committed murder of his grandson Basavaraj. It is also elicited that Gurayya and Shivashankarayya did not tell the police that Accused No.1 and 2 have committed the murder of his grandson Basavaraj.

13. The witnesses on whose evidence is based for conviction of the appellant are not the direct eye witnesses to the incident as none of them sustained injuries. They are hearsay witnesses and they came to the spot after the incident had happened. The evidence of PW-7 complainant differs from

that of contents of the complaint. He has stated in the complaint that he has seen Accused No.2 holding the collar of the shirt and Accused No.1 giving blow with the sickle on the head near the ear of the deceased. In the cross-examination PW-7 has admitted that he has not seen from which direction and how the accused came to the place of incident. If he had seen accused assaulting the deceased, he would have stated in the complaint accused leaving the place by motor cycle, but it is not there. There is material inconsistency in the evidence of PW-9 as to the time when the deceased and her husband left the house when it is compared with the deposition of PW-7 the complainant himself in this regard. PW-7 has stated in his deposition that there were 10 to 20 people gathered there. The prosecution has not examined those witnesses. The evidence of PW-8 and PW-9 is not helpful to prove the motive as alleged against the appellant because both of them have stated that they do not have personal knowledge as to intimacy of the deceased with wife of appellant. PW-15 the wife of appellant has stated that there was no intimacy with the deceased. The evidence of PW-11 is of no help to the prosecution to prove the

overt acts as alleged against the appellant for the simple reason that he came to the spot after the incident was over and what he deposed is based on hearing from the people gathered there. Even the panchayat to which the witnesses refer to, the other witnesses could have been examined by the prosecution.

14. PW-17 Dr.Rajendra Chadnrakant Nagavi has conducted the postmortem. He has admitted in the cross-examination that he has not mentioned whether the brain was intact or not. He has also not mentioned about extradural hemorrhage or subdural hemorrhage. The prosecution failing to prove the incident as it has sought to project, the evidence of the doctor who has conducted postmortem is of no help to bring home the guild.

15. From the above it is clear that there is no material on record to establish the motive of illegal intimacy of wife of the appellant with that of the deceased. Though the homicidal death of the deceased cannot be disputed, the duty cast upon the prosecution to prove the guilt as alleged beyond all reasonable

doubt. The prosecution has failed to discharge the said burden in the instant case.

16. In addition, PW-8 has admitted in his cross-examination that the wooden handle of sickle appearing in the photo and wooden handle of sickle MO-3 are different. The evidence of PW-8 as to the dissimilarity of MO-3 gets strengthened by the evidence of PW-21 CPI, where he admits, it is true to suggest that now shown both ends of handle of sickle are smaller than its middle portion in diameter. It creates as to the seizure of the material object which was used for commission of the offence.

17. In view of the above inconsistencies in the evidence of the witnesses, in the absence of the eye witnesses not supporting the case of the prosecution, the prosecution not examining any other persons who were present at the spot as deposed by PW-7, lack of materials to prove the motive which lead to commission of murder and the witnesses who have supported the case of the prosecution are relatives of the deceased, we are of the view that it is not safe to act upon the

evidence of the interested witnesses on whose evidence the conclusions of the trial court were based. The trial court has committed an error in not exercising a special care and caution in assessing the evidence of the interested witnesses, which fact of they being related, is not in dispute.

18. In the result, this appeal succeeds and we pass the following:

ORDER

The appeal is allowed. The judgment of the court below is set aside. The appellant is acquitted.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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