



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100192 OF 2023 (C)

BETWEEN:

SHIVAPPA S/O LAXMAPPA @ LAXMAN PUJAR,
AGE: 28 YEARS, OCC: AGRICULTURE,
R/O KALAKERI, TA: MUNDARGI,
DIST: GADAG-582118.

...APPELLANT

(BY SRI NAMADEV SEETARAM BADIGER, ADVOCATE)

AND:

STATE OF KARNATAKA
THROUGH MUNDARGI POLICE STATION,
R/BY STATE PUBLIC PROSECUTOR,
DHARWAD BENCH.

...RESPONDENT

(BY SRI M.B.GUNDAWADE, ADDL. SPP.)

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THIS CRIMINAL APPEAL IS FILED U/SEC. 374(2) OF CR.P.C. PRAYING TO, CALL FOR RECORDS AND SET ASIDE THE JUDGMENT DATED 30.03.2015 AND ORDER OF SENTENCE DATED 01.04.2015 PASSED BY THE COURT OF ADDL. DISTRICT AND SESSIONS JUDGE, AT GADAG IN S.C.NO.12/2014 IN CRIME NO.165/2013 MUNDARAGI POLICE STATION CONVICTING THE APPELLANT THEREBY ACQUIT THE ACCUSED IN S.C.NO.12/2014 FOR THE OFFENCE 309, 302 OF IPC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

This appeal is by the accused questioning the correctness of his conviction for the offences punishable under Section 302 and 309 of IPC.

2. The prosecution case is that, the deceased is the wife of accused, their marriage had taken place about two years before the incident that took place on 20.10.2013. Two days before the incident both of them had been to Saundatti Yallamma Temple and returned to the house of mother of the deceased at Singatarayankeri. Thereafter accused went to his village Kalkeri. On 20.10.2013 at 12.00 noon, the deceased and CW16-Devakka were going to Timmapur near Ganeshgudi temple. Accused intercepted both of them on the way and brought back the deceased to her mother's house. It appears that on the way deceased told her husband not to come to her mother's house in a drunken condition. After returning to the house of PW1-the mother of the deceased, there took place a quarrel between both of them in the course of which accused is said to have stabbed on the



abdomen of the deceased with a knife and with the same knife he inflicted injury to himself on his abdomen. The deceased died, accused survived. A report of this incident was made by PW1 to the police which resulted in investigation being held and accused being charge sheeted. After conclusion of trial the Trial Court convicted the accused for the offences under Section 302 and 309 of IPC and sentenced him to life imprisonment with fine of Rs.10,000/- for the offence under Section 302, and 6 months imprisonment for the offence under Section 309 IPC.

3. We have heard the arguments of Sri Namadev Seetaram Badiger, learned counsel for the appellant and Sri M.B.Gundawade, learned Addl.SPP for the State.

4. It is the argument of appellant's counsel that PW1 is a hearsay witness whose evidence should not have been relied upon by the Trial Court. There was no motive on the part of the accused. Charge sheet shows that the relationship between the accused and the deceased was cordial. PWs.4 and 6 are not the eyewitnesses. In these circumstances there was heavy burden on the prosecution to



prove as to how the death of the deceased occurred. In the wound certificate of the accused it is just mentioned as assault which indicates that somebody might have assaulted the deceased and the accused. PW1 has been cross-examined in this line by giving suggestions. Accused appears to have been unnecessarily implicated of having committed the death of his wife. Though a case of culpable homicide not amounting to murder has been made out accused was incorrectly charged for the offence under Section 302 IPC. Therefore there is good case for interfering with the impugned judgment. He further argues that inspite of the fact the offence under Section 309 IPC has been struck down by the Hon'ble Supreme Court, the Trial Court erred in framing the charge for the said offence and holding him guilty of the same. Therefore appeal deserves to be allowed.

5. *Per contra*, Sri M.B.Gundawade argues that the incident occurred inside the house of PW1. It may be a fact that the PW1 was not present when the incident occurred but very soon she came to her home and saw the dead body of her daughter. Some people who had gathered there might



have told her that accused stabbed her daughter and thereafter stabbed himself, this piece of evidence cannot be called hearsay evidence. Her evidence to this effect is corroborated by PWs.4, 6 and 8. If the evidence of PW6 is seen, she was playing outside the house at the time when the incident occurred inside the house. She heard scream of the deceased and then went near the house and saw her sister having fallen down. This was informed by her to the neighbours. PW6 has withstood the cross-examination. Her testimony itself is sufficient to record conviction against the accused. He also submits that accused carried the knife with him and it shows that he had clear intention to cause the death of his wife. He also submits that the Hon'ble Supreme Court has reversed its earlier judgments of striking down Section 309 of IPC as unconstitutional and therefore the said section is in the statute. With this he argues for sustaining the conviction judgment.

6. We have perused the entire evidence and considered the points of arguments. In our opinion it is enough to re-appreciate the evidence of PWs.1, 4, 6 and 8.



Before that if we look at the postmortem report, it is forthcoming that the death of deceased occurred due to cardiac failure with hemorrhagic shock which was due to internal bleeding to the intestinal injury. In the postmortem report it is clearly written that there was an injury on the stomach measuring 1" x 3 ½". With this it can be stated that death of the deceased was homicidal.

7. There is another wound certificate, marked Ex.P20, of the accused which shows that there was a stab (penetrating) injury over the epigastria of abdomen measuring 3 cm x ½ cm x 4 cm. The date of occurrence of injury is mentioned as 20.10.2013. The doctor has opined that injury sustained by the accused was threatening to his life.

8. No doubt PW1 who is the mother of the deceased was not an eyewitness but her testimony discloses that she returned home soon after the incident and came to know from the people who gathered there that it was the accused who had stabbed on the stomach of her daughter. She also came to know that accused inflicted injury to himself. After



coming to know of this incident she gave a report to the police based on which FIR was registered. The argument of appellant's counsel that she is hearsay witness cannot be accepted because whatever she has deposed falls within the scope of Section 6 of the Indian Evidence Act, because her deposition depicts certain facts that so closely related to incident.

9. Now if we subject the evidence of PW6, it becomes very clear when the accused and deceased were inside the house when she was playing outside. She heard the screaming voice of her sister and then went near the house. Seeing her sister having fallen down with bleeding injury she informed same to the neighbours. Immediately CWs.9 and 10 came that place and saw both the accused and the deceased. Evidence of PWs.4 and 8 is also of the same effect. If their cross-examination is perused we don't find that they are discredited. They may not be eyewitnesses to the incident but for that reason alone their testimonies cannot be discarded because all of them heard screaming voice of the deceased and that made them go inside the



house of PW1 and see the dead body of the deceased and the injured accused.

10. If we subject the above evidence to scrutiny it becomes amply clear that the incident occurred inside the house of PW1 where the deceased and accused were only two persons present when the incident occurred. If somebody was responsible for the incident, the burden was more than on the accused to explain who had gained entry into the house to cause injury to them. He remained silent. If the accused knew that third person was responsible for the incident that took place nothing prevented him to explain the same when he was examined under Section 313 Cr.P.C. or cross-examining the prosecution witnesses in that line. Such kind of cross-examination is not forthcoming. Therefore, the only conclusion to be drawn is that it was the accused who inflicted injuries to his wife and because of those injuries, she died. Thus there is believable evidence.

11. Though the evidence points to the involvement of the accused in the death of the deceased, the prosecution itself case very much discloses that the relationship between



the accused and the deceased had not been spoiled, they were in good terms and two days before the incident occurred they visited Saundatti Yallamma Temple together. The charge sheet also discloses that the accused and the deceased were being praised in the village as model couples. That means the relationship between them had not strained. It appears that when the deceased asked her husband not to visit the house of her mother in a drunken condition, accused became angry and in that course he might have resorted to inflicting injury to his wife. Whether the accused had carried the knife or used the knife available in the house of PW1 is not clear. Intention to cause the death is conspicuously absent. Charge sheet itself clearly discloses that the incident might have taken place in a fit of anger in the course of quarrel. It may be stated that the Trial Court should not have framed charge of the offence under Section 302 IPC. In these circumstances we are of the opinion that the Trial Court should not have convicted the accused for the offence under Section 302 of IPC as in our opinion the entire prosecution case false within the ambit of Part II of Section



304 of IPC. The self-infliction caused by the accused might have led to his death. It might be his intention to kill himself after stabbing his wife. From this incident also a clear inference can be drawn that after inflicting injury to his wife he might have realized that he did a mistake and therefore tried to commit suicide. The offence under Section 309 of IPC is thus proved.

12. The records show that the accused has already suffered imprisonment for more than 9 years. Having regard to his imprisonment period it may be stated that the period of imprisonment undergone by him may be set off for the punishment to be imposed for the offence under Section 304 Part II of IPC. For the offence under Section 309, he has stood convicted for 6 months and this punishment merges with the punishment imposed for the offence under Section 304 Part II IPC. So with this discussion, we proceed to pass the following:

ORDER

Appeal is partly allowed.



The judgment of the Trial Court is modified.

Conviction of the accused for the offence under Section 302 of IPC is set aside, instead he is convicted for the offence under Section 304 Part II IPC and sentenced to imprisonment for 9 years. Fine of Rs.10,000/- and default imprisonment imposed on him by the Trial Court is maintained.

Sentence under Section 309 IPC is not modified but it is made to run concurrently with sentence imposed for the offence under Section 304 Part II IPC.

Accused shall be set at liberty forthwith if his presence is not required in any other case.

This operative portion may be communicated to the jail authorities.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE