

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
LAKSHMANAIAH

DATE OF JUDGMENT 21/07/1992

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
RAMASWAMY, K.

CITATION:
1993 AIR 100 1992 SCR (3) 579
1992 SCC Supl. (2) 420 JT 1992 (4) 326
1992 SCALE (2) 45

ACT:

Indian Penal Code, 1860 :

Section 300-Murder of wife-Acquittal of husband by High Court-High Court not considering P.Ws. evidence of husband's maltreatment and assault of wife for money - rejecting evidence on flimsy ground of discrepancies-Factum of accused absconding not discussed-Acquittal set aside-Trial Court order of conviction and sentence-Upheld.

HEADNOTE:

The respondent in the appeal was tried for the murder of his wife and also for stealing his mother-in-law's property. The prosecution alleged that the respondent accused used to demand money from his mother-in-law through his wife and he had executed two promissory notes for Rs. 2,000 and Rs.3,000 in favour of his mother-in-law towards the money he had borrowed from her. He became disgruntled when his mother-in-law refused to comply with his demands, and his wife declined to help him in getting more money. As a consequence he started abusing, ill-treating and assaulting his wife. A few months before the occurrence the mother-in-law brought her daughter and her children to her house. After sometime the accused also came to reside at the house of his mother-in-law.

On January 12, 1979, a close relation of the mother-in-law came to their house at 4 p.m. On that day apart from the accused, his wife and two children, the mother-in-law and her younger daughter were present in the house. The accused gave Rs. 30 to his wife which she further gave to her mother for buying clothes for the children so that they could wear the same on the ensuing 'Sankranti' festival. The mother-in-law and her younger daughter went to the market to buy clothes for the children. Thereafter, the accused gave Rs. 2 to the relative and sent him to the market to bring 'heralikayi'-a vegetable. Therefore the accused was left alone in the house with his wife and two small children. When his mother-in-law and her younger daughter came back from the market they found the two children crying outside the house. On entering the house they did not find anybody

inside, and on further search they found the dead-body of the wife in the bathroom, her head ducked in the bucket full of water.

A case was registered with the police. The accused was found absconding, and was arrested on January 16, 1979. The accused was put up for trial. There was no direct evidence. The prosecution relied on the motive as disclosed by P.W.26, the mother-in-law, P.W.27 her younger daughter, and PWs 24 and 25. The presence of the deceased and the accused in the house of P.W. 26 on the evening of January 12, 1979 as deposed by P.W.17 the relative and P.W. 26 and P.W.27. The accused sending P.W.17, P.W.26 and P.W.27 to the market for purchasing of clothes and vegetable and the deceased being left alone with the two small children. The accused going towards the bus stop holding his suit-case in his hand on the evening of January 12, 1979 as seen by P.W.14 and corroborated by P.W. 20 and P.W.22, and the conduct of the accused in absconding from the evening of January 12, 1979 till he was apprehended on the night of January 16, 1979.

The Trial Court relying on the evidence of P.W.25, P.W. 26 and P.W.27 came to the conclusion that the accused used to maltreat and assault his wife because she refused to get money for him from her mother, and that the evidence of P.W.17, P.W.26 and P.W.27 proved the circumstance that the accused manipulated to send the three witnesses out of the house on the pretext of buying clothes and vegetable from the market. Accordingly, the Trial Court convicted the accused under Section 302 IPC and sentenced him to imprisonment for life, but acquitted him of the charge under Section 380 IPC.

The accused appealed to the High Court and a Division Bench set aside the order of conviction, and acquitted the accused. It held that there was variance in the evidence of P.W.26 and P.W. 27, and found contradiction in the statement of P.W. 26 and the F.I.R. Ex. P1, and concluded that the prosecution has not succeeded beyond reasonable doubt to establish that the accused had managed to send P.W.26 and P.W.27 out of the house at that point of time.

Allowing the State's appeal, reversing the High Court judgment and restoring the Trial Court judgment, this Court, HELD : 1. The High Court fell into patent error in rejecting the

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testimony of P.W.26 and P.W.27. Even if there is any contradiction on a non-material point that is no ground to reject the whole of the testimony of the witnesses. The High Court did not make any effort to read the statements of P.W.26 and P.W.27 and appreciate the same. [585E]

2. According to the High Court the discrepancy in regard to the number of 'Heralikayis' was sufficient to reject the testimony of P.W.17. The material part of the testimony of P.W.17 is that he was sent to the market to buy 'Heralikayis' whether they were two, three or six was not material. In any case the discrepancy is so minor that it cannot render the testimony of P.W.17 unworthy of acceptance. The High Court was therefore not justified in rejecting the evidence of P.W.17 on a flimsy ground. [585F]

3. The trial court relying upon the testimony of P.W.14, P.W.20 and P.W.22 came to the conclusion that the circumstance relied upon by the prosecution to the effect that the respondent was going towards bus stand holding suit-case in his hand at about 6.30 p.m. on January 12, 1979 was proved. There is no discussion, not even mention. [585H]

4. The High Court has also not discussed the

circumstance that the respondent was absconding till the night of January 16, 1979 when he was arrested which is surely a link in the chain of circumstances to establish that the respondent alone had committed the offence of murder of his wife.

[586B]

5. The High Court judgment is patently perverse and is set aside. The judgment of the trial court is restored. The respondent is convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life. [586C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.373 of 1981.

From the Judgment and Order dated 12.6.80 of the Karnataka High Court in CrI. Appeal No. 346 of 1979.

M. Veerappa for the Appellant.

Devendra Singh for the Respondent.

The Judgment of the Court was delivered by

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KULDIP SINGH, J. Lakshmanaiah was tried for the murder of his wife Nagarathnamma and also for stealing his mother-in-law's property. He was convicted by the trial court under Section 302, India Penal Code and was sentenced to imprisonment for life. He was, however, acquitted of the charge under Section 380, IPC. The appeal filed by Lakshmanaiah against his conviction under Section 302, IPC was allowed by the High Court and he was acquitted. No appeal against his acquittal under section 380, IPC was filed before the High Court. This appeal is by the State of Karnataka against the judgment of acquittal rendered by the High court.

Lakshmanaiah along with his wife and two children aged two years and eight months was residing in Mandya City. Gowramma, his mother-in-law, alongwith her younger daughter Leelavathi, was also residing in the same city at a short distance from his house. The prosecution case is that Lakshmanaiah used to demand money from his mother-in-law through his wife. He had executed two promissory notes for Rs. 2,000 and Rs. 3,000 in favour of his mother-in-law towards the money he had borrowed from her. He became disgruntled when his mother-in-law refused to comply with his demands and his wife declined to help him in getting more money from her mother. As a consequence he started abusing, ill-treating and assaulting his wife. Few months before the occurrence Gowramma brought her daughter Nagarathnamma and her children to her house. After some time Lakshmanaiah also came to reside at the house of his mother-in-law. It is alleged that on January 12, 1979 Mahadev, a close relation of Gowramma came to their house at about 4 p.m. On that day apart from Lakshmanaiah, his wife and two children, there were Gowramma, Leelavathi and Mahadev present in the house of Gowramma. According to the prosecution story Lakshmanaiah gave Rs.30 to his wife which she further gave to her mother for buying clothes for the children so that they could wear the same on the ensuing "Sankranti" festival. Gowramma and Leelavathi went to the market to buy clothes for the children. Thereafter Lakshmanaiah gave Rs. 2 to Mahadev and sent him to the market to bring "Heralikayi" a sort of vegetable. Thereafter Lakshmanaiah was left alone in the house with his wife and two small children. When Gowramma and Leelavathi came back from the market they found the two children crying

outside the house. On entering the house they did not find anybody inside. On further search they found the dead-body of Nagarathnamma in the bathroom, her head ducked in the bucket full of water. After some time Mahadev also came back to the house and learnt about the death of Nagarathnamma. Gowramma came

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to know from the neighbours that her son-in-law went out of the house some time back. Case was registered with the police. Lakshmanaiah was found absconding. He was, however, arrested on January 16, 1979.

There is no direct evidence against the respondent. The prosecution relied on the following circumstances:

1. Motive as disclosed by Kalaraju PW 24, Puttamadappa PW 25, Gowramma PW26 and Leelavathi PW 27.

2. Presence of deceased and the respondent in the house of PW 26 on the evening of January 12, 1979 as deposed by Mahadev PW 17, PW 26 and PW 27.

3. After sending PW17, PW26 and PW27 from the house for purchasing clothes and "Heralikayi", the respondent was alone with the deceased along with two small children.

4. The respondent was going towards bus-stop holding his suit-case in his hand on the evening of January 12, 1979 as seen by Subbaiah PW 14 and corroborated by Chikkaiah PW 20 and Boraiah PW 22.

5. The conduct of the accused in absconding from the evening of January 12, 1979 till he was apprehended on the night of January 16, 1979.

On the question of motive PW 25, PW 26 and PW 27 have deposed that the respondent was demanding money from PW 26 through his wife and in that connection he used to maltreat her. PW 24 also corroborated their version. The trial court rightly did not attach much importance to the testimony of PW 24 but relying on the evidence of other three witnesses, came to the conclusion that the respondent used to maltreat and assault his wife because she refused to get money for him from her mother. The High Court has not adverted to this aspect of the prosecution case.

The circumstances regarding the presence of the respondent in the house of PW 26 and the act of his sending PW 17, PW 26 and PW 27 to the market for making purchases have been sought to be proved by the testimony of PW 17, PW 26 and PW 27. Gowramma PW 26 has consistently deposed that the respondent was living in her house and on January 12, 1979 he gave Rs. 30 to her and asked her to purchase clothes for the

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children to be worn on the festival of "Sankranthi". She further deposed that she left the house along with her daughter PW 27. PW 17 Mahadev has deposed that he went to the market to buy "Heralikayi" at the asking of the respondent. The statements of these three witnesses have been relied upon by the trial court in proving the circumstance that the respondent was alone in the house with his wife and two children. The trial court further relied upon the evidence of these witnesses to prove the circumstance that the respondent manipulated to send the three witnesses out of the house on the pretext of buying clothes and "Heralikayi" from the market. A Bench of Karnataka High Court consisting of M.S. Nesargi and D.R. Vithal Rao, JJ. disbelieved the testimony of PWs 26 and 27 on the following reasoning:

"In the first instance, it has to be seen whether the accused had managed to send away PWs 26 and 27 to purchase clothes for the children. It is the

say of PWs 26 and 27 that the accused gave Rs. 30 in the hands of the deceased and asked her to request PW 26 to go to the market and purchase clothes for the children. What is stated in Ex.P.1 in this behalf is that the deceased told her children to observe Sankranti festival and that the accused had given money in her hands for that purpose and requested her that she and PW 27 should go and purchase clothes. PW 26 told the deceased that she should go and bring clothes but she said that she was unable to walk that much distance and requested PW 26 and PW 27 themselves to go. This variance leads to an inference that the version of PW 26 and PW 27 that the accused had asked the deceased to spend PW 26 and PW 27 for purchasing clothes is a latter improvement made by PW 26 and PW 27. Therefore, we hold that the prosecution has not succeeded beyond reasonable doubt to establish that the accused had managed to send PW 26 and PW 27 out of the house at that point of time".

Since the High Court has found contradiction in the statement of PW 26 and the FIR Exhibit-P.1 (got recorded by Gowramma) it would be useful to reproduce the relevant part of the FIR:

"My daughter gave me 30 rupees and told me that the son-in-law had asked to buy new clothes for the children and requested me to go and buy them. I asked her to go and buy the

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clothes herself but she asked me to go. I went to the cloth shop along with my younger daughter."

The relevant part of the statement of PW 26 is as under:

"Then my son-in-law gave Rs. 30 to my daughter and asked her to get cloth for the children through me. I told my daughter that I find it difficult to make purchases and it was better for them to go and purchase the cloth. In turn my daughter told me. "I cannot go there please go." I agreed and took my younger daughter Leelavathi along with me to the cloth shop. We returned home at 6.30 in the evening after buying the cloth."

Reading the two quotes above we do not find any contradiction. We are at a loss to understand how the High Court has found contradiction in the statement of PW 26 and the FIR when none exists. There has been total lack of application of mind on the part of the learned Judges of the High Court. Even if there is any contradiction on a non material point that is no ground to reject the whole of the testimony of the witnesses. The High Court did not make any effort to read the statements of PW 26 and PW 27 and appreciate the same. We are of the view that the High Court fell into patent error in rejecting the testimony of PW 26 and PW 27. The High Court rejected the testimony of PW 17 on the ground that the Investigating Officer PW 31 stated that Mahadev PW 17 had six "Heralikayis" in his hand at the time of recording of his statement, whereas PW 29 stated that after the occurrence when he went to the house of PW 26 he saw two "Heralikayis" in the hands of PW 17. Ultimately three "Heralikayis" were produced in the court. Accordingly to the High Court the discrepancy in regard to the number of "Heralikayis" is sufficient to reject the testimony of PW 17. We do not agree with the High Court. The material part of the testimony of PW 17 is that he was sent to the market to buy "Heralikayis". Whether the "Heralikayis" were two,

three or six was not material. In any case the discrepancy is so minor that it cannot render the testimony of PW 17 unworthy of acceptance. The High Court was not justified in rejecting the evidence of PW 17 on a flimsy ground.

The trial court relying upon the testimony of PW 14, PW 20 and PW 22 came to the conclusion that the circumstance relied upon by the prosecution to the effect that the respondent was going towards bus-stand holding suit-case in his hand at about 6.30 p.m. on January 12, 1979 was

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proved. There is no discussion, not even mention, of this circumstance by the High Court,. According to us, the trial court rightly relied upon this circumstance in connecting the respondent with the crime. The High Court has also not discussed the circumstance that the respondent was absconding till the night of January 16, 1979 when he was arrested which is surely a link in the chain of circumstances to establish that the respondent alone had committed the offence of murder of his wife. All the above discussed circumstances would prove that the respondent alone had killed his wife Nagarathnamma and the prosecution brought home the offence against the respondent beyond any shadow of doubt.

We are of the view that the High Court judgment is patently perverse and has to be set aside. We, therefore, allow the appeal, reverse the High Court judgment and set aside the acquittal of the respondent under Section 302, Indian Penal Code. We restore the judgment of the trial court, convict him under section 302, IPC and sentence him to undergo rigorous imprisonment for life. We direct that the respondent Lakshmanaiah be taken into custody forthwith to undergo the balance sentence of imprisonment for life.

N.V.K.

Appeal allowed.

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