

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 04TH DAY OF AUGUST, 2020

PRESENT

THE HON'BLE MR.JUSTICE B.A.PATIL

AND

THE HON'BLE MR.JUSTICE HANCHATE SANJEEVKUMAR

CRIMINAL APPEAL NO.200019/2014

BETWEEN:

Sri Kariyappa @ Keenappa
S/o Shankrappa
Age 43 years,
R/o Marigemma Dibbi Tanda,
Tq. Devadurga, Dist. Raichur.
At present Central Jail, Gulbarga.

... Appellant

(By Sri B.C.Jaka, Advocate)

AND

State of Karnataka by
Devadurga Police Station,
Through the Additional State Public Prosecutor,
High Court of Karnataka,
Bench at Gulbarga.

... Respondent

(By Sri Prakash Yeli, Addl. SPP)

This Appeal filed under Section 374(2) of Code of Criminal Procedure praying to set aside the impugned judgment and order dated 29.10.2011 passed in S.C.No.35/2011 on the file of the Presiding Officer, FTC-I, Raichur and further allow this appeal thereby acquitting the appellant from the alleged offences punishable under Section 498-A and 302 of IPC and pass such orders as is deemed fit under the circumstances of the case.

This Appeal is coming for final hearing this day, **B.A.PATIL J.**, delivered the following;

JUDGMENT

This appeal is preferred by the appellant/accused challenging the legality and correctness of the judgment of conviction and order on sentence passed by the Fast Track-I at Raichur in Sessions Case No.35/2011 dated 29.10.2011 (hereinafter referred to as 'the Sessions Court' for brevity).

2. We have heard the learned counsel Sri B.C.Jaka appearing for the appellant/accused and the learned Additional State Public Prosecutor Sri Prakash Yeli, appearing for the respondent/State.

3. The factual matrix of the case as averred in the compliant are that—

The accused being the husband of the deceased Choulamma, used to ill-treat the deceased both mentally and physically after consuming the alcohol for one or the other reason. Even the elders of Marigemma Dibbi Tanda, Devadurga Taluk, Raichur District have advised the accused not to ill-treat his wife but he did not concede their advise and went on ill-treating and threatening her by stating that he will kill her on one or the other day.

It is further alleged that on 18.08.2010 at about 9.45 a.m. when the deceased was sleeping in a hut which was used as a tea stall, accused called his wife to serve food for which she told him to get himself serve for which he got enraged, picked-up quarrel with her, assaulted her with his elbow and made her to fall on the ground with an intention to kill her, thereafter took a rope and strangled her neck. Thereafter, picked-up an iron rod and pierced into her private part and caused

bleeding injuries and as a result of the same, deceased succumbed to the injuries.

On the basis of the complaint a case has been registered in Crime No.136/2010 and after the investigation charge sheet came to be filed as against the accused. The committal Court committed the case to the Sessions Court after following the procedure and the Sessions Court took the cognizance and secured the presence of the accused and after hearing both the sides the charge was framed and read over and explained to the accused, accused pleaded not guilty and claims to be tried and as such the trial was fixed.

To prove the case of the prosecution case, prosecution has got examined 15 witnesses and got marked 16 documents and 06 material objects. Thereafter, the statement of the accused was recorded by putting incriminating materials as against him, he denied the same and he has got examined DWs.1 and 2

as defence witnesses and has not got marked any documents. After hearing the arguments from both the sides the Sessions Court arrived to the conclusion that the accused has committed the offences punishable under Sections 498-A and 302 of Indian Penal Code and has been convicted. Being aggrieved by the same, the appellant/accused is before this Court.

4. The main grounds urged by the learned counsel for the appellant/accused is that the judgment of conviction and order on sentence passed by the Sessions Court is contrary to law and the material placed on record and same is liable to be set-aside. It is his further submission that the evidence of PW.1-complainant is inconsistent and having contradictions and omissions and even in the complaint-Ex.P.1 the complainant has not stated what has been deposed before the Court. The said evidence is not convincing to hold that she is an eyewitness to the alleged incident. He further submitted that the material witnesses PWs.3

and 4, have not supported the case of the prosecution and they have been treated as hostile, under such circumstances the evidences of these witnesses is not acceptable.

5. It is his further submission that the evidence of PW.2 the cousin brother of the deceased also does not support the case of the prosecution.

6. It is his further submission that there is no corroboration with the evidence of PW.1 and the Doctor who has conducted the autopsy over the dead body of the deceased and has issued a post mortem report as per Exhibit P.11. It is his further submission that the Sessions Court has not properly appreciated the evidence of this witness in its right perspective. Even there is no strong motive to come to the conclusion that the accused who has committed the alleged offences. On these grounds, he prayed to allow the appeal and to set-aside the judgment of conviction and order on sentence.

7. Per contra, learned Additional State Public Prosecutor vehemently argued and contended that the evidence of PW.1 corroborates with the post mortem report Exhibit P.11. The accused always used to ill-treat and harass the deceased and elders of the said Tanda convinced the accused many a times not to ill-treat the deceased but the accused did not conceded to their advise and went on ill-treating the deceased and on the alleged date of incident he has assaulted the deceased with his elbow and made the deceased to fell down on the ground then accused strangled with rope and brutally he has also inserted a sharp weapon into her private part and caused the bleeding injuries and the deceased died on the spot.

8. It is his further submission that the Sessions Court after taking into consideration the evidence of PW.1 has rightly convicted the accused. There are no good grounds made out by the appellant/accused to interfere with the impugned judgment of conviction and

it deserves to be affirmed by dismissing the appeal. On these grounds he prayed to dismiss the appeal.

9. We have carefully and cautiously gone through the submissions made by the learned counsels appearing for the parties and perused the records including the Sessions Court records.

10. It is the case of the prosecution that accused used to ill-treat and harass the deceased in that light the accused always used to assault and he has also uttered that he will take away or done away with the life of the deceased on one or the other day. In order to establish the case of the prosecution, prosecution got examined as many as 15 witnesses.

11. PWs.1, 3 and 4 are the eyewitnesses to the alleged incident. PWs.3 and 4 are the son and daughter of the deceased though they are the eyewitnesses to the incident but they have not supported the case of the prosecution and they have been treated as hostile.

12. PW.1 is none other than the sister of the deceased and she is the complainant. In her evidence she has deposed that accused was addicted to drinking alcohol. Since beginning of the marriage accused was ill-treating her sister for one or the other reason. She further deposed that accused was abusing her sister that she does not know how to prepare food and every day used to quarrel with her. She further deposed that when she tried to pacify the quarrel on some occasions, accused was objecting for the same and was threatening her also.

13. She further deposed that as they were not having parents, therefore, they had approached the elders and complained about the ill-treatment given by the accused to the deceased, they came and tried to convince the accused and accused did not listen to their words and told them that he will kill the deceased.

14. She further deposed that about 11 months back at 10.00 p.m. CW.6 – Mounesh who is son of accused and deceased, came to her house and informed that his father is assaulting his mother and asked her to come immediately and immediately she went to the house of the deceased and tried to pacify the quarrel and rescued the deceased at that time accused pushed her away and she fell down and was tried to get up and again rescued the deceased in the mean time the accused throttled the neck of the deceased, he made her to fall on the ground and pierced iron rod into her private part and also tied her neck with a rope. She further deposed that accused carried out his wish as he was always threatening her sister to kill her one day.

15. During the course of cross-examination of this witness nothing has been elicited so as to discard the evidence. Even the evidence of this witness also corroborates with the evidence of PW.10 the Doctor who has conducted autopsy over the body of the deceased.

PW.10 is the Doctor who has conducted autopsy over the body of the deceased and even the post mortem Exhibit P.11, it corroborates with the evidence of PW.1. In the post mortem report Exhibit P.11 the Doctor has examined the dead body of the deceased and found that there is well defined depressed ligature mark-rope below the thyroid cartilage the mark completely encircles the neck thonsversely length 34 cms and width 7-8 cms.

16. He further deposed with regard to the injuries found on genitor urinary organs and he has further deposed that internal healthy external lacerated wound at upper wall of vaginal measuring 2½ x 1"x1" was present and he has also opined that the death is due to asphyxia as a result of ante mortem strangulation and he has issued post mortem report as per Exhibit P.11. During the course of cross-examination of this witness also nothing has been elicited so as to discard the evidence.

17. Though during the course of argument the learned counsel for the appellant/accused contended that the evidence of PW.1 is not acceptable and she is not an eyewitness to the incident. The contents of Exhibit P.1 does not disclose what evidence has been narrated before the Court but it is the trite law that the first information report need not contain an exhaustive account of the incident, it is not an encyclopedia of the case. This proposition of law has been laid down by the Hon'ble Apex Court in the case of ***Prabhu Dayal vs. State of Rajasthan [(2018) 8 Supreme Court Cases 127]***, wherein their lordships were pleased observed as follows ;-

“14. It is settled law that the FIR need not contain an exhaustive account of the incident. This Court in Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648, observed as follows: (SCC pp.658-59, para 10)

“10. ...It is axiomatic that the FIR need not contain an exhaustive account of the incident. It is to be noted that the report was given to the police within one-and-a-half hours after the incident. PW 8, a known person, had drafted the report that she dictated. She had given all essential and

relevant details of the incident naming the accused as culprit. We cannot expect a person injured and overtaken by grief to give better particulars. The possibility of PW 1 inventing a story at that juncture trying to implicate the accused is absolutely ruled out. The contents of the FIR, broadly and in material particulars, conform to the version given by PW 1 in her deposition..."

15. *An FIR is not an encyclopaedia of the case. This Court in Surjit Singh v. State of Punjab, 1993 Supp (1) SCC 208, observed as follows: (SCC pp.212-13, para 8)*

"8. ...In this situation the aforesaid misdescriptions/omissions in the FIR about the number of shots fired and the absence of Taljit Singh's injuries or the appellant being not described as a military man become of lesser importance. First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eyewitnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. For these reasons, we are of the view that the High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own."

(emphasis supplied)

17. Recently, in *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1, this Court observed as follows: (SCC p. 70, para 57)

“57. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law that FIR is not an encyclopaedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopaedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.” ”

18. Keeping in view of the ratio laid down in the above decision, though the narration does not contain what has been deposed before the Court but what has been deposed by PW.1 it corroborates with the post mortem report Exhibit P.11 and the evidence of PW.10 and in that light the evidence of PW.1 reposes the confidence of this Court that she is an eyewitness to the alleged incident and she has immediately reacted and acted as stated therein. Her evidence and the presence

is natural and probable. So, in that light there are no circumstances to discard the evidence of this witness.

19. PW.2 is the cousin brother of the deceased and he has also spoken with regard to the death of the deceased and conducting the inquest panchanama over the dead body of the deceased as per Exhibit P.2 and spot mahazar as per Exhibit P.6.

20. PW.6 is the RMP Doctor, he deposed that immediately after the incident he has been called to verify about the health condition of the deceased he verified and came to the conclusion that the deceased is no more and she had been declared as dead. That evidence also corroborates that immediately after the incident he has tested the pulse and also heart beat and found that she died. It also appears to be natural and probable.

21. PWs.7 and 8 are the neighbourers, they have spoken with regard to the accused consuming alcohol

and was ill-treating and beating his wife and they had advised him not to ill-treat his wife but the accused was not asking their intervention and they kept quiet as the matter is in between the husband and the wife. During the course of cross-examination what were the suggestions, which have been made in this behalf, have been denied.

22. Taking into consideration the evidences of PWs.7, 8 and PW.1 that they have categorically spoken with regard to the ill-treatment and harassment given by the appellant/accused to the deceased and in that light on the alleged date of incident accused has strangled the deceased and caused the death and the accused has also pierced a sharp edge instrument into her private part that itself shows the brutality of the act of the accused.

23. Taking into consideration the above said factual matrix of the case on hand that the prosecution has proved the guilt of the accused beyond all

reasonable doubt. There are no grounds made out by the appellant/accused so as to interfere with the judgment of the Sessions Court and it deserves to be confirmed. Therefore, we pass the following

ORDER

The appeal is dismissed as devoid of merits.

The judgment of conviction and order on sentence dated 29.10.2011 passed in Sessions Case No.35/2011 by the Fast Track-I, Raichur is hereby confirmed.

Registry is hereby directed to send back the Trial Court records.

**SD/-
JUDGE**

**SD/-
JUDGE**

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