



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1673 of 2011

SHARANAPPA @ SHARANAPPA . . . APPELLANT(S)

VS.

STATE OF KARNATAKA . . . RESPONDENT(S)

J U D G M E N T

Abhay S.Oka, J.

Heard the learned senior counsel appearing for the appellant and the learned Additional Advocate General appearing for the respondent-State.

2. The appellant was convicted by the Trial Court for the offences punishable under Sections 302 and 201 of the Indian Penal Code (for short "IPC"). For the offence under Section 302, the Trial Court sentenced the appellant to undergo life imprisonment and to pay fine of Rs.25,000/- (Rupees twenty five thousand). In the appeal, by the impugned judgment, the High Court has confirmed the conviction.

3. Reference to few relevant facts will be necessary. The deceased is Meenakshi with whom the appellant married on Basavajayanti day in the year 2003 in a mass marriage programme. The appellant was working as a Coolie at Mangalore. About 3-4 months prior to the date of incident, the appellant took the deceased to Mangalore and started residing together in a rented room owned by PW-10.

4. The case of the prosecution is that on 28th May, 2004 PW-3 Alfred Mathai saw the appellant in the company of the deceased near Mariyapura Bus Stop. On 30th May, 2004 a body of a female person was recovered in a decomposed state. The body was identified as that of the deceased wife of the appellant.

5. The prosecution case is that on 28th May, 2004 itself, the appellant informed his father-in-law that his wife was missing. However, he did not file a missing complaint. The appellant filed a missing complaint on 31st May, 2004. The First Information Report was registered on the basis of the complaint filed by appellant's father-in-law on 1st June, 2004. The allegation made therein was that the appellant suspected that his wife was living an adulterous life and that was pleaded as a motive to kill the deceased.

6. The case is based on circumstantial evidence. The first circumstance is of last seen together. The second circumstance is of the recovery of knife allegedly used as a weapon of offence by the appellant, at the instance of the appellant. The third circumstance is that though even according to the appellant, the deceased was missing since 28th May, 2004, he never filed a missing complaint till 31st May, 2004 and he did so after getting the knowledge of the fact that the dead body of his wife was found on earlier day.

7. The learned senior counsel appearing for the appellant has taken us through the evidence of PW-3 Alfred Mathai and submitted that the evidence of the said witness is wholly unreliable. He also invited our attention to the evidence of the alleged witnesses to the Recovery Memorandum of alleged recovery of the knife at the instance of the appellant. He submitted that both the witnesses have not supported the prosecution. His submission is that both the important circumstances which constitute the chain of circumstances against the appellant have not been established.

8. The learned Additional Advocate General appearing for the respondent-State, while supporting the impugned judgment, submitted that the Trial Court and the High Court have analyzed the evidence of PW-3 and found that his version was reliable. His submission is that the appellant has not explained a very important circumstance against him that from 28th May, 2004 to 31st May, 2004 he did not lodge even a missing report with the police. He submitted that only after he came to know about the recovery of body of his wife, he lodged missing complaint.

9. As stated earlier, the case is based on circumstantial evidence. Therefore, it is the duty of the prosecution to establish all the circumstances forming a part of the chain. The first and the most important circumstance relied upon by the prosecution was of last seen together. The only witness examined to prove the said circumstance was PW-3 Alfred Mathai. According to his version in the examination-in-chief, the appellant used to come for work as a helper for fitting tiles and therefore, he had seen the appellant. He stated that he was a Electrical Contractor. His version is that on 28th May, 2004 when he was proceeding towards Adyapadi Church where he used to go in connection with

his work, he saw the appellant along with his wife near Mariyapura Bus Stop. He stated that he was not aware that the woman accompanying the appellant was his wife. In his examination-in-chief, he has also stated that on 30th May, 2004, he was informed by one Walter Mathai that a dead body of a woman was found in his property. Therefore, he proceeded to the said place where dead body was found. He claimed that he knew the appellant, as he had come to new building of Adyapadi Church to fit tiles for nearly 15-20 days. He claimed that he had seen the deceased lady in company of the appellant on 28th May, 2004.

10. In the cross-examination, the witness stated that he has not stated anything before the police which is found in his statement Exhibit D-1 which was recorded under Section 161 of the Code of Criminal Procedure, 1973. He admitted that in the cross-examination that (a) he did not state before the police that the appellant used to come for doing the work of fixing tiles in the new building of the Church; (b) he has not stated before the police when he was proceeding towards Adyapadi Church, he saw the appellant and his wife at Mariyapur Bus Stop and (c) he did not identify the woman after he saw the dead body because the face was in bad shape.

11. Further, in the cross-examination he stated that only when he went to the police station he came to know who the accused was and also whose dead body it was.

12. Thus, it is crystal clear that what is stated by the PW-3 Alfred Mathai in his examination-in-chief is a complete improvement. Therefore, it is impossible to believe his testimony. Hence, the theory of the prosecution about the last seen together must fail.

13. So far as the case of the prosecution regarding recovery of the weapon of the offence at the instance of the appellant is concerned, we find that both PW-4 and PW-5 were allegedly the witnesses to the mazhar have not supported the prosecution. PW-4 stated that he signed the mazhar at the police station. PW-5 did not depose before the Court that the appellant, while in police custody, stated that he was aware about the place at which he had concealed the weapon of the offence. Therefore, even the second circumstance pleaded by the prosecution was not at all established. Only on the basis of the third circumstance based on the conduct of the appellant, the appellant cannot be convicted.

14. Hence, the appeal succeeds and is accordingly allowed. We set aside the impugned judgments and acquit the appellant of the offences alleged against him.

15. As the appellant has been enlarged on bail, his bail bonds stand cancelled.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
October 04, 2023.