

**IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD**

Dated this the 15<sup>th</sup> Day of April 2013

Present

**THE HON'BLE MR.JUSTICE B.V.PINTO**

And

**THE HON'BLE MR.JUSTICE H.S.KEMPANNA**

Criminal Appeal No.2888/2011

Between:

Appasab Basappa Halatti,  
Age: 28 years, Occ: Coolie,  
R/o: Karoshi, Tq: Chikodi,  
Dist: Belgaum.

...Appellant

(By Shri Srinand A. Pachchapure, Advocate)

A n d :

The State of Karnataka,  
By Chikodi Police Station,  
Now Rep. by SPP.

...Respondent

(By Shri V.M.Banakar, Addl. State Public Prosecutor)

This criminal appeal is filed under Section 374(2) of Cr.P.C. seeking to set aside the judgment of conviction and order of sentence dated 26.09.2011 passed by the District Judge, Fast Track Court-I, Chikodi, in S.C. No.179/2011 for the offence punishable under Section 302 of IPC.

This criminal appeal coming on for further hearing this day, **H.S.Kempanna, J.**, delivered the following:

### **JUDGMENT**

This appeal preferred by the appellant/accused is directed against the judgment and order dated 26.09.2011 passed in S.C.No.179/2011 by the Presiding Officer, Fast Track Court-I, Chikodi, convicting him for the offence under Section 302 of Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default to undergo imprisonment for five months.

2. The brief facts of the case are:-

(a) The appellant/accused was tried on the charge for the offence under Section 302 IPC. It is alleged that on 05.03.2011 at about 5.00 a.m., in the hut situated in R.S. No.104/2 of Karoshi village, the accused did commit murder of his wife Laxmi Bai by intentionally

assaulting her with a chopper and thereby he has committed the aforementioned offence.

(b) It is the case of the prosecution, the deceased Laxmi Bai is the daughter of P.W.7 and sister of P.W.5 and P.W.9. She had been given in marriage to the accused about two years prior to the date of occurrence which took place on 05.03.2011. After the marriage, the deceased was living in her marital home i.e., the hut situated in R.S.No.104/2 of Karoshi village. The parents of the accused viz., P.Ws.17 and 18 were also residing in a separate hut situated by the side of hut where the accused and the deceased were living. The deceased lead a cordial marital life with the accused for sometime. Thereafter, it is the case of the prosecution, the accused having become addicted to alcohol started subjecting the deceased to cruelty and harassment on the ground of demand for money to take his drink. In this connection, frequent quarrels were taking place

between them. This was informed by the deceased to her mother-P.W.7 who, in turn, came to Karoshi the place of accused accompanied by P.Ws.10 and 19 and advised the accused to desist from the act of ill-treatment. The accused did not heed to the said advice but continued with the act of ill-treatment.

(c) Such being the case, according to the prosecution, on 05.03.2011 at about 5.00 a.m., the accused committed murder of his deceased wife Laxmi Bai by intentionally assaulting her with the chopper-M.O.13 and thereafter, left the said place. P.Ws.17 & 18, who were residing next to the hut of the accused and the deceased, went to the said hut and on noticing the body of the deceased in the hut, P.W.17, the mother of the accused, informed P.W.7 on phone stating that her daughter, the deceased, is in a serious condition and she should come over to Karoshi village. In response to the same, P.W.7 came to the hut of the

accused and the deceased situated at Karoshi accompanied by her son-P.W.5, daughter-P.W.9, P.Ws.10, 11, 19, 20, 21 who are elders of her village viz., Maradimath, at about 2.00 p.m. After coming to Karoshi village, she and others, who had accompanied her, noticed the body of the deceased with injuries in the hut. Thereafter, P.W.7 proceeded to Chikodi Police Station and there she filed her complaint as per Ex.P.6 before P.W.15-PSI, who in turn, on the basis of Ex.P.6 registered a case in Crime NO.69/2011 for the offence under Section 302 IPC against the accused and issued FIR to the jurisdictional Magistrate which reached at about 5.50 p.m. on the same day. Thereafter, he handed over further investigation of the case to P.W.23, the Investigating Officer. P.W.23, on taking over the investigation, proceeded to the spot of occurrence, there, he held inquest over the body of the deceased and drew up inquest panchanama as per Ex.P.1 in the presence of panchas-P.Ws.1 and 2. At the time of

Ex.P.1, he recorded the statements of the blood relatives of the deceased and forwarded the body to the hospital for subjecting it to post-mortem examination along with a requisition. In pursuance of the same, P.W.22 conducted autopsy over the body of the deceased and issued post-mortem report as per Ex.P.17. In the meantime, P.W.23 continuing the investigation drew up the scene of offence panchanama as per Ex.P.2 in the presence of panchas-P.Ws.3 and 4 and, at that time, he seized M.Os.1 to 4. After completing Ex.P.3, he drew up the rough sketch of the scene of occurrence as per Ex.P.18. He also recorded the statements of the witnesses. Thereafter, he seized M.Os.5 to 12 – the clothes found on the body of the deceased produced by P.W.12, Head Constable to whom the body had been entrusted for subjecting to post-mortem examination under panchanam-Ex.P.4 in the presence of panchas-P.Ws.6 and 13. He also deputed his staff to trace and apprehend the accused. In the meantime, he also

recorded the statements of P.Ws.5, 8, 9, 10, 11, 17, 18, 19 to 21 and also other witnesses. On 07.03.2011, P.W.23 arrested the accused on being produced by P.W.14-ASI. On interrogation, he recorded his voluntary statement as per Ex.P.19. Thereafter, P.W.23 seized M.Os.13 to 15 under panchanama Ex.P.5 in the presence of panchas P.Ws.6 and 13, at the instance of the accused pursuant to his statement-Ex.P.19. Thereafter on completing the arrest formalities, he got the accused remanded to judicial custody. He also recorded the statement of the witnesses. Continuing the investigation, P.W.23 forwarded all the seized articles in the case for subjecting them to chemical examination to Forensic Science Laboratory, Belgaum. Thereafter, on receipt of the relevant documents from the concerned authorities, since the investigation had been completed, P.W.23 submitted final report against the accused before the jurisdictional Magistrate who, in turn, committed the case of the accused to the Court of

Sessions which, on receipt of the records, secured the presence of the accused, framed charge against him as aforesaid to which he pleaded not guilty but claimed to be tried.

(d) The prosecution in support of its case, in all, examined P.Ws.1 to 23 and got marked Exs.P.1 to 22 and M.Os.1 to 15. The accused got marked Exs.D.1 to D.8 in the course of examination of the prosecution witnesses.

(e) After closure of the prosecution evidence, the accused denied all the incriminating circumstances that were put to him in his examination under Section 313 Cr.P.C. He also submitted that he has no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

(f) The learned trial Judge on considering the oral and documentary evidence placed on record came to the



conclusion that the prosecution has established the charge levelled against the accused and, accordingly, by the impugned judgment and order, convicted and sentenced him as aforesaid.

3. The appellant/accused being aggrieved by the judgment and order of conviction and sentence is in appeal before this Court.

4. Shri Srinand Pachchapure, learned counsel appearing for the appellant/accused assailing the impugned judgment and order contended, the case of the prosecution rests on circumstantial evidence. The circumstances pressed into service are motive, last seen evidence and the recovery. None of these circumstances have been established by placing cogent and reliable evidence. He further submitted, the evidence of PWs.5, 7 and 9 who are brother, mother and sister of the accused is untrustworthy in respect of the alleged

harassment meted out to the deceased by the accused in respect of demand for money. In this connection the evidence of PWs.10 and 19 is also untrustworthy as the same is not corroborated from each other. He further contended, insofar as the last seen evidence is concerned, the prosecution has relied upon the evidence of PW.8 who has turned hostile. Therefore his evidence is of no avail to the prosecution. Insofar as recovery of MOs.13 to 15 at the instance of the accused made under Ex.P.5, he submitted, the same cannot be believed because the evidence of PWs.5, 7, 19 and 20 reveal that the accused was in the police station as on the date of the occurrence itself, whereas the alleged recovery is shown to have been made at the instance of the accused on 7.3.2011, which cannot be believed. Despite these materials on record, the trial Judge without appreciating the material on record in its right perspective has committed an error in coming to

the conclusion that the prosecution has proved the guilt of accused beyond all reasonable doubt, which finding being contrary to the evidence on record and perverse, be set aside and the appellant/accused be acquitted of the charge levelled against him.

5. Per contra, Sri V.M.Banakar, learned Government Pleader appearing for the respondent/State supporting the impugned judgment and order contended, there is no reason whatsoever to discard the evidence of PWs.5, 7 and 9 which is further fortified from the evidence of PWs.10 and 19 in respect of the alleged harassment meted out to the deceased by the accused in respect of demand for money. He also further contended, the complaint Ex.P.6 has come into existence within no time after PW.7 has come to Karoshi village, which has reached the jurisdictional Magistrate on the same day at about

5.00 p.m., within about 2 hours after the registration of the case. He also contended, insofar as the recovery is concerned, it has been amply established from the evidence of the pancha witnesses PWs.6 and 13 which is fortified from the evidence of PW.23, the Investigating Officer. Further the evidence on record reveals that the accused and the deceased were living separately in the hut situated in R.S.No.104/2 of Karoshi village. The body of the deceased with injury is found in the hut of the accused. No proper explanation has been offered by the accused as to the finding of the body of the deceased in his hut. PWs.17 and 18 are admittedly the parents of the accused and they having turned hostile is obvious having regard to their relationship with the accused. But the evidence of PWs.5, 7 and 9 coupled with the evidence of PWs.10, 11, 19, 20 and 21 would clinchingly establish that it is the accused who is the culprit in the case. The

evidence of these witnesses is also fortified from the evidence of PW.22, the Medical Officer, who has conducted autopsy over the body of the deceased and has noticed injuries on the body of the deceased, as reflected in the postmortem report Ex.P.17. The learned trial Judge on a careful consideration of the entire material on record has come to the right conclusion in holding that the prosecution has proved the guilt of the accused beyond all reasonable doubt, which finding having been based on the evidence, does not suffer from any infirmity calling for interference in this appeal, hence it be dismissed.

6. Taking the rival contentions, the evidence and the documents on record, the points that arise for our consideration are:-

- (i) Whether the prosecution has established that the deceased Laxmibai has died an homicidal death?

- (ii) If so, whether the prosecution has established that the accused is responsible for the homicidal death of the deceased?
- (iii) Whether the impugned judgment and order of the trial Judge calls for any interference?

7. PW.22 is the Medical Officer who has conducted autopsy over the body of the deceased. He in his evidence has stated that on 5.3.2011 he conducted autopsy over the body of the deceased at Chikkodi Hospital. At the time of postmortem examination he noticed the following external injuries.

- (i) there was a cut wound measuring  $\frac{1}{4}$ " x 2" on the neck;
- (ii) below injury No.1 there was a lacerated wound measuring 4" x 4".

On dissection of the body he noticed the following injuries.

Below the neck the left artery had been cut.

8. He has further stated that the death has occurred on account of severe bleeding. He has also opined that the death is due to injury on the neck, which has caused haemorrhage, shock and cardio-respiratory failure. He has issued postmortem report as per Ex.P.17. This evidence of PW.22 is fortified from the evidence of PW.23, the Investigating Officer, who has held inquest and has drawn up the inquest panchanama Ex.P.1. His evidence reveals that at the time of Ex.P.1 he and the panchas noticed injury on the neck as described in Ex.P.17 the postmortem report issued by PW.22, the Medical Officer. It is also fortified from the evidence of PWs.5, 7, 9, 10, 11, 19, 20 and 21 who have also noticed the injuries on the neck as noticed both by PW.22, the Medical officer and PW.23, the Investigating

Officer, at the time of postmortem examination and inquest respectively. In the cross-examination of these witnesses nothing serious has been elicited to discredit their testimony with regard to finding of the injuries on the neck of the deceased, which has resulted in her death according to PW.22, the Medical Officer. The homicidal death of the deceased is also not disputed to before us. Therefore having regard to the nature of the injuries, which we have adverted to above, we are of the clear view that the deceased Laxmibai has died on account of the injuries sustained on her neck and therefore the prosecution has established that she has died an homicidal death.

9. The prosecution in order to connect the accused with the homicidal death of the deceased have relied upon the circumstantial evidence. The circumstances that have been pressed into service



are motive, last seen evidence and the recovery. We deal with each of the circumstances as under:-

(a) Motive: It is the case of the prosecution that the deceased after her marriage with accused was living with him in the hut situated in R.S.No.104/2 of Karoshi village. The evidence on record reveals that it was only the accused and the deceased who were living in that hut and their parents were living in a separate hut situated adjacent to the hut where the accused and the deceased were living. According to the prosecution, the deceased led a cordial marital life with the accused for some time. Thereafter the accused started subjecting her to cruelty and harassment both mentally and physically on the ground of demand for dowry as he had become addicted to alcohol. The deceased had brought this to the notice of her mother PW.7. The evidence of PW.7 reveals that her deceased

daughter was subjected to cruelty and harassment by the accused on the ground of demand for money for consuming alcohol and in that connection she had come down to Karoshi village accompanied by PWs.10 and 19 and advised the accused to desist from his act of ill-treatment. But the accused had not heeded to their request. The said evidence of PW.7 is also fortified from the evidence of PWs.10 and 19 in respect of they having come to Karoshi village along with PW.7 and advising the accused to desist from the act of ill-treatment. We do not find any worthwhile material elicited in their cross-examination to disbelieve the testimony of the aforementioned witnesses. Apart from this, the evidence of PWs.5 and 9 who are the brother and the sister of the deceased also go to show that the accused was subjecting the deceased to cruelty and harassment. Admittedly the accused and the deceased were living separately in a hut. PWs.17

and 18 who are the parents of the accused and neighbours cannot be expected to support the prosecution case having regard to their relationship with the accused. However the evidence of PWs.5, 7, 9 coupled with the evidence of PWs.10 and 19, in our view clearly establishes that the accused was subjecting the deceased to cruelty and harassment on the ground of demand for money as he had become addicted to alcohol.

(b) Last seen evidence: The next circumstance relied upon is last seen evidence. Insofar as this circumstance is concerned, the prosecution has relied on the evidence of PW.8. No doubt PW.8 has turned hostile to the prosecution. The cross-examination of PW.8 by the learned Public Prosecutor reveals that on that date i.e., on the date of the occurrence on 5.3.2011 at about 5.00 a.m. he had seen the accused going away from his hut while he was in his lands which is

situated adjacent to the land where the hut of the accused is situated. It is not the law, merely because he has turned hostile, the entire material that is brought in his cross-examination has to be thrown out. If what has been brought in the cross-examination of a hostile witness is corroborated from the other circumstances, reliance can be placed on the same. We have already held that the prosecution has established the motive. For the reasons which we advert to in the light of the voluntary statement so far as recovery is concerned, we are of the view that the prosecution has also established this circumstance of the accused having been last seen going away from the scene of occurrence. We are fortified in our view, because there is no proper satisfactory explanation of the accused as to the finding of the body of his deceased wife in his hut. PWs.17 and 18 who are his parents have turned hostile. He has not made any efforts to inform the parents of

the deceased if he was not the culprit in committing the murder of the deceased. The very fact of finding of body of the deceased in the hut of the accused with injuries would go to show that it is the accused who is the culprit in the case and that is the strong circumstance pointing towards him.

(c) Recovery: Insofar as the recovery is concerned, it is the case of the prosecution, the accused was arrested by PW.23 on 7.3.2011 on being produced by PW.14, the ASI. After his arrest, his voluntary statement has been recorded as per Ex.P.19. In pursuance of the same, PW.23 has recovered MOs.13 to 15, namely a chopper, shirt and pant under the panchanama Ex.P.5 in the presence of the panchas PWs.6 and 13. The recovery of these articles MOs.13 to 15 under Ex.P.5 is supported in toto by PW.13 the pancha. It is further fortified from the evidence of PW.23,

the Investigating Officer. An attack was made that the recovery cannot be believed, because the evidence of PWs.7, 19 and 20 reveal that the accused was in the police station on the date of occurrence itself. We find it difficult to accept the said submission, because Ex.P.22 the FSL report discloses that the blood stains found on MOs.13 to 15 recovered at the instance of the accused under Ex.P.5 tallies with the blood group of the deceased. A stray admission of these witnesses, in the facts and circumstances of the case would not lead to discard the recovery of MOs.13 to 15 made at the instance of the accused. We have come to this conclusion for the reasons that there is no proper explanation given by the accused as to finding of the body of the deceased in his hut with injuries.

10. Taking from any angle, we are of the clear view that all the circumstances relied upon

by the prosecution has been established by placing cogent and reliable evidence. The learned trial Judge has not assigned in detail the reasons, which we have adverted to except concentrating on non explanation of the finding of the body in the hut of the accused. However from a careful consideration of the evidence which we have perused in toto, we are of the clear view that the prosecution has proved the guilt of the accused beyond all reasonable doubt. In that view of the matter, we do not find any merit in this appeal. Accordingly it is dismissed.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

KMS/MRK/-