R

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 20TH DAY OF NOVEMBER, 2020

PRESENT

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

AND

THE HON'BLE MR JUSTICE P.KRISHNA BHAT

CRIMINAL APPEAL No.200141/2016

BETWEEN:

Vijay @ Vijendra S/o Subhash Suravase
Age: 26 years, Occ: Student
r/o. Javalaga (J), Tq: Aland
Dist: Kalaburagi

... **Appellant**

(By Sri Shivasharana Reddy, Advocate)

AND:

The State of Karnataka
Through Aland Police Station
(By Addl. SPP High Curt Building)

... **Respondent**

(By Sri Prakash Yeli, Addl. SPP)

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to allow the appeal by setting aside the judgment and order passed by IV Addl. District and Sessions Judge Kalaburagi dated 23.01.2016 in S.C.No.153/2011 by

convicting the appellant under Sections 447, 504 and 302 of IPC and acquit the appellant of the above said offence, in the interest of justice and equity.

This appeal having been heard, reserved for judgment on 04.11.2020 and coming on for pronouncement of judgment this day, ***P.Krishna Bhat J.***, delivered the following:-

JUDGMENT

The accused has come up in this appeal seeking to set aside the judgment dated 23.01.2016 in S.C.No.153/2011 passed by the learned IV Additional District and Sessions Judge, Kalaburagi.

2. CW.1 – Pushpa is the deceased/victim. PW.4 and PW.5 are her parents. Accused is related to the victim and it is the case of the prosecution that for some time prior to occurrence of the crime on 27.04.2009, accused had been pursuing and pressuring the victim to marry him, professing love to her and when she repudiated the same, he started resorting to abusive tactics. PW.1 is the younger sister of PW.4. On 27.04.2009, PW.4 had taken PW.5 to a hospital for

treatment leaving behind CW.1 victim and PW.1 in the house. At about 12.45 p.m. when the victim and PW.1 were watching TV in the house, accused entered the house and started telling the victim girl that she should marry him and if she rejected him, he would not allow her to marry anybody else and, thereupon, when the victim rejected his proposal, he whipped out a knife and went on stabbing on her chest, on her abdomen and on her shoulder etc., causing seven to eight serious injuries. When PW.1 tried to intervene and raised hue and cry and when people started gathering there, accused left the house leaving the blood dripping weapon of offence behind and ran away from there. Some time thereafter, PW.4 and PW.5 returned to the house only to see their daughter (CW.1) lying in a pool of blood, but, still alive. She narrated the manner of occurrence of the incident to her parents and PW.1 was also present at that time. Thereafter, she was shifted to a local hospital and from there she was shifted to

Ashwini Hospital, Solapur and also YMC Hospital, Pune where she breathed her last on 07.06.2009 while undergoing treatment.

3. It is the further case of the prosecution that on 27.04.2009 immediately after CW.1 victim was admitted to the hospital, PW.10 – PSI had gone there and recorded her statement at 1.30 p.m. and on his return, based on the said statement, he registered a case against the accused as per FIR (Ex.P9) for the offences punishable under Sections 504, 325 and 307 of Indian Penal Code, 1860 (for short 'IPC'). After her death on 07.06.2009, the offence under Section 302 of IPC was incorporated and on completion of the investigation, a charge sheet was filed against the accused for the offences punishable under Sections 447, 504 and 302 of IPC.

4. The accused was tried before the learned IV Additional Sessions Judge, Kalaburagi after giving

opportunities to the accused and during the same, PW.1 to PW.14 were examined and Exs.P1 to P16 were marked. MOs.1 to 4 were also marked. The accused was examined under Section 313 of Cr.P.C. and his answers were recorded. Accused did not choose to examine any witness for the defence. After hearing, learned Sessions Judge by his judgment dated 23.01.2016 found the accused guilty of the offences punishable under Sections 447, 504 and 302 of IPC and sentenced him accordingly. It is against the said conviction and sentence, the present appeal has been filed.

5. We have heard learned counsel for the appellant/accused and perused the synopsis filed by him and also authorities cited by him. We have heard learned Additional SPP and perused the synopsis filed by him and the authorities cited by him. We have perused the records.

6. After giving our careful consideration to the records, we are inclined to agree with the well considered judgment of learned Sessions Judge impugned herein and affirm the conviction and sentence pronounced by him.

7. That the death of C.W.1 is homicidal in nature has not been disputed before us.

8. We notice that PW.1 is an eyewitness to the incident. Further, PW.4 and PW.5, the parents of the deceased had reached the house immediately after the incident and they had an opportunity of ascertaining the fact from the deceased. The incident had taken place at about 12.45 p.m. on 27.04.2009. The victim was immediately taken to the hospital where PW.10 had recorded her statement at about 1.30 p.m. as per Ex.P8. The prosecution has endeavored to prove its case through the eyewitness account of PW.1, the dying

declaration as per Ex.P8 proved through PW.10 and the oral dying declaration made before PW.4 and PW.5.

9. Learned counsel for the appellant/accused has no doubt strenuously contended that deceased had not made any statement before PW.10 as per Ex.P8 and it is a cooked up document. According to him, the very fact that Ex.P8 did not contain any endorsement/ certificate from the medical officer affirming the fact that CW.1 the victim was in a fit state of mind to give the statement itself is a strong indicator that she had not made any such statement. In order to buttress the said argument, he also brought to our notice that even though CW.1 was continuously in hospital from 27.04.2009 to 07.06.2009 till she died, no such statement in the presence of the medical officer was recorded which, according to him, supports his contention.

10. We need to observe at this stage that if the prosecution is able to establish that C.W.1 had made the statement (Ex.P.8) which, on her death, partakes the character of a dying declaration; it was voluntary and she was in a fit state of mind at that time, a certificate regarding the fitness to make such statement by a doctor is not mandatory. The law on this subject is very clear. It is restated by the Constitution Bench of the Hon'ble Supreme Court of India in ***Laxman Vs. State of Maharashtra*** reported in ***(2002) 6 SCC 710.***

11. The second, but intrinsically connected with the aforestated aspect of the case is whether PW.1 was present at the time of the incident and, therefore, she is an eyewitness to the same ? There is no dispute about the fact that PW.1 is the younger sister of PW.4, the father of the victim CW.1. Her presence is stated in the earliest version of the incident Ex.P8. The case was registered based on Ex.P8 in FIR Ex.P9. The endorsement of learned jurisdictional JMFC on Exs.P8

and P9 clearly show that they had reached the Court by 7.00 p.m. on 27.04.2009 itself. Therefore, there was no unreasonable delay in either registering the case or delivering the FIR with Ex.P8 to the Court. Learned Sessions Judge has extracted the text of Ex.P8 in paragraph No.20 of the judgment. As already noticed, in Ex.P8, there is a clear mention about the presence of PW.1 and the time of the incident and also arrival of PW.4 and PW.5 soon after the incident. Ex.P8 also states that the victim had narrated the incident to PW.4 and PW.5. Ex.P8 was recorded by PW.10, the PSI.

12. In his evidence, P.W.10 has stated very clearly that on receiving the information, he had gone to the hospital and recorded the statement of the victim and based on the same, he had registered the case. Even though he has been cross-examined on behalf of the accused, there is absolutely nothing elicited so as to disbelieve the version of PW.10 that he had in fact recorded the statement from CW.1 as per Ex.P8. Even

though learned counsel for the appellant/accused now contends before this Court that victim CW.1 was not in a fit condition to make statement as per Ex.P8, there was absolutely no cross-examination of PW.10 on the said aspect. There is no cross-examination of PW.10 on the aspect that she had not made the said statement voluntarily, either.

13. Yet another aspect which requires to be noticed is that PW.10 has stated that he had recorded the statement of PW.1, PW.4 and PW.5 in the hospital on 27.04.2009 itself. This aspect of the evidence of PW.10 has not been seriously controverted during his cross-examination.

14. In the above circumstances noticed by us, there is no reason for us to disbelieve the version of the prosecution that PW.10 had gone to the hospital at about 1.30 p.m. on 27.04.2009 and he had recorded the statement of CW.1 (deceased) as per Ex.P8 and based

on the same, he registered the case under FIR Ex.P9. Nothing is elicited from PW.10 to show that CW.1 was not in a fit mental condition to make statement as per Ex.P8 and it was not voluntary.

15. Now, to turn our attention to the version of the eyewitness PW.1, there is a ring of truth to the version given by her before the Court. Her presence in the house at the time of the incident is very natural, she being the younger sister of PW.4 and her statement was recorded on 27.04.2009 itself. In her evidence before the Court also she has stated that accused had entered the house and started insisting with the deceased to marry him and when she repudiated his proposal and told him unambiguously that she had to consult her parents he went on stabbing her with a knife and, thereafter, he had run away. No material omission or contradiction was noticed in her evidence by the learned Sessions Judge and none was pointed out to us, either. There is nothing elicited during her cross-examination

to discredit her version and the learned Sessions Judge has believed her and has held that she is an eyewitness to the incident and we entirely agree with him. Her version completely supports the case of the prosecution.

16. Close perusal of the evidence further discloses that PW.4 and PW.5 had reached the scene of occurrence very soon after the incident and they had ascertained the manner of happening of the offence from the mouth of CW.1, the victim. The consistent version of the prosecution is found from Ex.P8 as well as the statements of PW.4 and PW.5 recorded by the Investigating Officer on the very day of the incident itself. The learned Sessions Judge has rightly believed their version before the Court.

17. Learned counsel for the appellant/accused submitted before us that a lenient view is required to be taken, in as much as, accused had acted under grave and sudden provocation. We have no hesitation in

rejecting this contention as, from the facts proved, it is evident that the accused himself had gone to the house of the deceased with a knife in his hand and imposed himself upon CW.1 by asking her to marry him and on her refusal, he had stabbed her. In other words, he was trying to assert some kind of domain over CW.1 only because he was a male and he was unwilling to reconcile to the situation that CW.1 as a woman could rebuff the same and assert her individual autonomy and agency to take a decision on the choice of her life partner. The circumstance in which he had committed the offence clearly shows that he could not stand the fact that a woman could refuse his proposal to marry him. In such a situation, it is completely absurd to contend that there was grave and sudden provocation from the side of the deceased especially when, while she was rejecting the proposal what she was essentially doing was asserting her individual autonomy which was entirely legitimate for her to do. What is of significance

in this case is that he had gone inside the house of C.W.1 fully armed and determined not to take a `no' for an answer.

18. Accused, as the evidence shows, has betrayed utter disdain to the inherent right of C.W.1 as a human; to her individual autonomy to choose who to love and to her right to choose a husband and even, to defer to the wishes of her parents in matters of significance in her life, which in itself is a conscious "choice". This in essence is a fundamental right guaranteed to every individual under Articles 14, 19 (1) (a) and 21 of Constitution of India. To permit the accused to take a defence of 'grave and sudden provocation' in the facts and circumstances of this case apart from being "obnoxious", (***Pawan Kumar, at para-47***) [(2017) 7 SCC 780] will result in negation of the fundamental rights of the deceased under Articles 14, 19 (1) (a) and 21 of the Constitution of India and, as such, opposed to public policy. Therefore, we reject the said contention.

19. While on this, we must hasten to add that we are not unmindful of the general position that fundamental rights not excluding those under Articles 14, 19(1)(a) and 21 are all guarantees against actions of State and its instrumentalities and not against criminal offences by one citizen against another. We are even more conscious of the 'felt necessities of the time' that wherever text does not inhibit and context demands, ordinary laws of the land should be given such construction and, scope of defences available so mapped that lofty principles enshrined under the above Articles are given full effect to and dehumanizing effect of the defences are suitably pruned without doing violence to the statute creating such defence while at the same time making it resonate with the current understanding of the concept of gender justice and dignity of the individual. 'The Declaration of Independence' of July 4, 1776 says in ringing tones, "*.....we hold these truths to be self-evident, that all men*

are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, - That whenever any Form of Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and happiness.....".

20. Life, Liberty and pursuit of Happiness is an entitlement and a right without which there cannot be a 'right to life' for an individual and shorn of the same, it will only be a creature existence. Thus viewed, extending the protective umbrella of 'grave and sudden' provocation to the accused, in the facts and circumstances of this case, will have the effect of robbing the victim of her right to express her `choice'.

In other words, the defence of 'grave and sudden' provocation shall not avail an accused if the result of permitting such a defence is to dehumanise the person of victim, stultify her individual autonomy, agency and dignity.

21. In sum, PW.1 who is an eyewitness has completely supported the case of the prosecution and her evidence is clear and clinching. Learned Sessions Judge is right in believing her version which clearly shows that on 27.04.2009 accused had entered the house of the deceased with a deadly weapon like, knife in his hand and had threatened her and thereafter had stabbed her on various parts of the body and with the best of medical attentions and continuous institutionalized treatment, she could not be saved. As rightly held by the learned Sessions Judge, there is no iota of doubt that Ex.P8 is a dying declaration and CW.1 had made the said statement in a fit state of mind and voluntarily. Ex.P8 also corroborates the version of

PW.1. Similarly, evidence also clearly shows that immediately after the incident CW.1 had narrated the same to her parents PW.4 and PW.5. They have also supported the case of the prosecution before the Court. In this regard, it is apposite to refer to the following observation of the Hon'ble Supreme Court of India in ***Laltu Ghosh vs. State of West Bengal*** reported in ***(2019) 15 SCC 344*** as follows:

> "19. ..... *More so, where the version given by the deceased as the dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration. The doctor PW18, who recorded the statement of the deceased which was ultimately treated as his dying declaration, has fully supported the case of the prosecution by deposing about recording the dying declaration. He also deposed that the victim was in a fit state of mind while making the said declaration. We also do not find any material to show that the victim was tutored or prompted by anybody so as to create suspicion in the mind of the Court. Moreover, in this case the evidence of the eye witnesses, which is fully reliable, is*

corroborated by the dying declaration in all material particulars. The High Court, on reappreciation of the entire evidence before it, has come to an independent and just conclusion by setting aside the judgment of acquittal passed by the Trial Court. The High Court has found that there are substantial and compelling reasons to differ from the finding of acquittal recorded by the Trial Court. The High Court having found that the view taken by the Trial Court was not plausible in view of the facts and circumstances of the case, has on independent evaluation and by assigning reasons set aside the judgment of acquittal passed by the Trial Court."

22. For the foregoing, the finding of the learned Sessions Judge that the prosecution has proved the offences punishable under Sections 447, 504 and 302 of IPC against the appellant/accused is fully supported by the evidence and, therefore, we affirm the same and consequently, the appeal is liable to be dismissed. Hence, the following:

ORDER

The appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Srt