

S.Govindaraju vs State Of Karnataka on 19 August, 2013

Equivalent citations: 2013 AIR SCW 5025, 2013 (15) SCC 315, 2013 CRI. L. J. 4710, AIR 2013 SC (CRIMINAL) 2112, 2013 (4) AIR KANT HCR 289, (2014) 1 MARRILJ 382, 2014 (3) SCC (CRI) 665, (2013) 4 BOMCR(CRI) 718, (2013) 3 UC 1878, 2013 (10) SCALE 454, (2013) 4 DLT(CRL) 563, (2013) 6 KANT LJ 542, (2013) 130 ALLINDCAS 129 (SC), (2013) 3 MAD LJ(CRI) 605, (2013) 3 DMC 467, (2013) 4 CURCRIR 83, (2013) 10 SCALE 454, (2013) 4 CRIMES 76

Author: B.S. Chauhan

Bench: S.A. Bobde, B.S. Chauhan

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2280 of 2009

S. Govindaraju
...Appellant

Versus

State of Karnataka
...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 6.6.2007, passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1146 of 2000, preferred by the State against the judgment and order of the Sessions Judge, Bangalore city dated 8.6.2000, passed in Sessions Case No.550 of 1995, by which and whereunder, the appellant stood acquitted of all the

charges under Sections 498A and 304B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC) and Sections 3, 4 and 6 of the Dowry Prohibition Act (hereinafter called the 'DP Act'). The High Court on appeal convicted the appellant under Section 304B IPC and awarded a sentence of 7 years; under Section 498A IPC awarded the sentence for a period of 3 years and also a fine of Rs.5,000/- was imposed, and in default, to undergo further sentence of 6 months. The appellant was also convicted under Section 3 of DP Act and imprisonment for a period of 5 years was awarded alongwith a fine of Rs.10,000/-, and in default to undergo imprisonment for one year; under Section 4 of DP Act, imprisonment for a period of 6 months was awarded and a fine of Rs.10,000/- was imposed, in default, to undergo imprisonment for 3 months. However, all the sentences were directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant got married to one Shanthi on 16.9.1994. The marriage was negotiated by their parents at the house of one Jayasingh. The parents of Shanthi gave 7 to 8 gold ornaments including a neck chain and a ring to the appellant in the marriage. After the marriage, the appellant and Shanthi were residing at the appellant's house bearing no.93, 2nd Cross, Basaveshwara Nagar, Magadi Road, Bangalore. It was only at a distance of one kilometre from her parents' house. It is alleged that Shanthi was ill-treated by the appellant and also physically and mentally tortured, demanding more dowry.

B. On 14.12.1994, the appellant quarrelled with Shanthi on the ground that she had taken Rs.50/- from his shirt pocket without his consent. Shanthi committed suicide by pouring kerosene and setting herself ablaze. She was taken to Victoria Hospital, Bangalore, however, she died at about 7 p.m. on the same day. As it was a case of unnatural death, the post-mortem was conducted on the dead body of Shanthi on 15.12.1994 and in the opinion of Dr. B.R.S. Kashyap (PW.17), the cause of death was shock as a result of burns sustained. About 95% ante-mortem burns were noticed.

C. Sundaresh (PW.1), father of deceased Shanthi lodged a complaint on 16.12.1994 alleging that the appellant was responsible for the death of his daughter Shanthi and in view thereof, the Police registered an FIR in case No.773 of 1994 under Sections 498A and 304B IPC. The appellant was arrested on 17.12.1994. The investigation commenced and charge-sheet was filed under Sections 498A, 304B IPC and 3, 4 and 6 of DP Act and the matter was committed to Sessions.

D. During the trial, 17 witnesses were examined by the prosecution. The star witnesses were Sundaresh (PW.1), father of deceased Shanthi, Manimaran (PW.2), brother of deceased Shanthi, and Sakkubai (PW.6), mother of deceased. In addition thereto, the other witnesses were Smt. M. Sarala Somaiah, (PW.15), I.O., Dr. B.R.S. Kashyap (PW.17) who conducted the post-mortem examination. The appellant was examined at the verge of conclusion of trial under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') and vide judgment and order

dated 8.6.2000, the appellant was acquitted of all the charges.

E. Aggrieved, the State preferred an appeal before the High Court which has been allowed vide impugned judgment and order dated 6.6.2007.

Hence, this appeal.

3. Mr. Rohat Bansal, learned counsel appearing for the appellant has submitted that the High Court failed to appreciate the judgment of the Trial Court in the correct perspective and interfered with the judgment and order of acquittal passed by the Trial Court in contravention of the parameters laid down by this Court. There had been material contradictions in the statements of PWs.1, 2, 6 and 7. Therefore, the Trial Court had rightly passed the order of acquittal. The FIR itself was lodged on 16.12.1994 though Shanthi died on 14.12.1994. The question of dowry demand would not arise. The statement made by Sarasa, sister of deceased before her family members was accepted by the High Court without realising that Sarasa was not examined by the prosecution. The High Court failed to appreciate that when two views are possible, the view beneficial to the accused must be accepted. Therefore, the appeal deserves to be allowed.

4. Per contra, Ms. Anitha Shenoy, learned counsel for the State has vehemently opposed the appeal contending that Shanthi, a 20 year old girl died within 3 months of her marriage in the house of the appellant. Therefore, the incident was within the special knowledge of the appellant and he failed to explain how Shanthi had died. The appellant doubted the fidelity of Shanthi alleging that she had developed illicit relations with Raju, a friend of her brother Manimaran (PW.2) and got pregnant before their marriage and that is why she had committed suicide. Though the medical report specifically revealed that Shanthi was not pregnant, the doubt harboured in the mind of the appellant would itself a ground for torturing Shanthi, which had driven her to commit suicide. Law is well settled that in case the findings recorded by the Trial Court are perverse, the order of acquittal can be interfered by the Appellate Court. Thus, in view of the above, no interference is called for. The appeal lacks merit and is accordingly dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The case of the prosecution had been that Shanthi was treated in a hostile and cruel manner by the appellant who asked her to bring additional gold articles which drove her to commit suicide. She had also been assaulted by the accused/appellant on 14.2.1994 suspecting that she had taken Rs.50/- from his pocket without his consent. The undisputed facts remain that Shanthi was residing at 1 Km. distance from her parents' house and she had been visiting the said family quite often and died within a period of three months of her marriage as she suffered from 95% burn injuries.

7. Sundaresh (PW.1), father of the deceased deposed that about one month earlier to her marriage, the marriage talks were held at the house of Jayasingh, a relative of the appellant-accused and his parents had demanded 10 sovereign gold ornaments as dowry. He could give only some lesser gold ornaments then what had been demanded. That after one month of marriage, when Shanthi,

deceased, had come to his house and told him that she was beaten by her husband and asked to bring the balance 4 sovereign gold ornaments from her parents.

8. Manimaran (PW.2), brother of the deceased, deposed that about 6 months prior to the marriage, talks were held at the house of Jayasingh and his parents had demanded 10 sovereign gold ornaments. Gold necklace, jumuki, gold ring and silver leg chain were given in the marriage alongwith other articles like wrist watch, clothes and almirah etc. About 15-20 days prior to the death of Shanthi, some neighbours had informed his family that there were always quarrels and galata between the appellant and his sister Shanthi in their house. His other sister Sarasa, who had visited the house of Shanthi- deceased, told him that her husband was often quarrelling with her saying that the dowry gold articles given at the time of marriage were not sufficient and the same were of less quantity.

9. Sakkubai (PW.6), mother of the deceased, deposed that talks for marriage took place six months prior to the marriage at the house of Jayasingh and appellant's parents and uncles had demanded 10 sovereign gold ornaments but they expressed their ability to give only 7-8 sovereign gold ornaments. She corroborated the version of other witnesses about the quarrels and galata between the appellant and Shanthi, deceased. That after her marriage Shanthi did not have a peaceful married life and it had been revealed by Shanthi herself to the witness that quarrels used to take place frequently between them. Shanthi, deceased, had visited her parents' house 7-8 times.

10. Hamsaveni (PW.5) deposed that talks for marriage took place at the house of Jayasingh about 1-1/2 months earlier to the marriage but she did not depose about the demand of gold ornaments.

11. Bhuvaneshwari (PW.7) who was tenant of Sundaresh (PW.1), deposed that when Shanthi visited her parents' house, she had told her that quarrels and galata used to take place between Shanthi and her husband as he had been demanding gold ring etc.

12. The aforesaid evidence reveals the following facts:

I) The talk of marriage was held at the house of Jayasingh, a relative of the appellant/accused.

II) The version of the aforesaid witnesses in respect of the time when the talks took place varied between one month to six months.

III) The demand of 10 sovereign gold ornaments by the appellant from the parents of deceased Shanthi had been revealed in the depositions of Sundaresh (PW.1), Manimaran (PW.2) and Sakkubai (PW.6). The deposition of Hamsaveni (PW.5) in regard to such demand is silent.

IV) In respect of cruelty, Sundaresh (PW.1) deposed that he got this information from Shanthi, deceased herself, though, Manimaran (PW.2) deposed that he came to know about it from his sister Sarasa. Sakkubai (PW.6) and Bhuvaneshwari (PW.7) deposed

that regarding the demand of dowry and cruelty, they had been informed by Shanthi, deceased.

13. The Trial Court appreciated the aforesaid evidence and found that the time with regard to the negotiations of marriage varied between one month and six months prior to marriage. There were contradictions, in this respect in the statements of witnesses. The demand of quantity of gold varied from 7-10 sovereign as per the version given by the witnesses. Sakkubai (PW.6) has also deposed in respect of the demand made by the uncles of the accused and such version has not been given by Sundaresh (PW.1) and Manimaran (PW.2). Different versions had been given in respect of description of articles of gold ornaments by Sundaresh (PW.1), Manimaran (PW.2), and Sakkubai (PW.6), i.e., as to whether it was a necklace, Jumuki, ring or silver leg chain. Sundaresh (PW.1) did not mention the fact while lodging the FIR that negotiation of marriage took place at the house of Jayasingh but he had specifically mentioned therein that there was a demand of 8 to 10 sovereign gold.

In view of aforesaid findings, the trial court came to the conclusion that there had been material contradictions in the statements of the witnesses on material issues and therefore the same could not be relied upon. Hence, the court accorded acquittal.

14. The High Court reversed the findings of fact observing that the same were perverse and there were no material contradictions whatsoever as the material aspects of the case had been whether there was a demand of gold articles at the time of negotiations of marriage and whether subsequent to marriage Shanthi was ill-treated by the appellant.

15. It is a settled legal proposition that in exceptional circumstances, the appellate court, for compelling reasons, should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse, i.e. if the conclusions arrived at by the court below are contrary to the evidence on record, or if the court's entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice, or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case. While doing so, the appellate court must bear in mind the presumption of innocence in favour of the accused, and also that an acquittal by the court below bolsters such presumption of innocence.

16. The time when the talks of marriage were held and the place where the negotiations took place are totally irrelevant. More so, the marriage took place in September 1994, incident occurred on 14.12.1994 and evidence of the witnesses was recorded in August 1999 i.e. after 5 years of the date of marriage. Thus, it may not be possible for the witnesses to remember dates etc. exactly at such a belated stage. The quantity of gold demanded by the accused side may vary as per the versions of the prosecution witnesses but the demand was there which is the most material issue to be examined in the case. Further, it is also immaterial as to whether the uncles of the accused also joined negotiations in this regard as stated by Sakkubai (PW.6). In the FIR, if the issue of demand had been mentioned. It may not be fatal if it had not been mentioned therein that negotiations took place at the house of Jayasingh for the reason that the place of negotiation is totally immaterial as it has no

relevance to determine the issue of demand. If the description of ornaments varied to a limited extent in the versions of the prosecution witnesses, it remains of no consequence for the reason that people may not remember exactly what had been given.

17. Similarly, in respect of the issue of cruelty, it could not be held to be any contradiction if Sundaresh (PW.1) and Sakkubai (PW.6) deposed that Shanthi, deceased herself told them and Manimaran (PW.2) deposed that she was informed by his other sister Sarasa. We do not see any contradiction, forget material contradictions on the basis of which the Trial Court had granted acquittal.

18. It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not effect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same, without providing justifiable reasons for doing so. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt.

19. The defence version has been that Shanthi, deceased, had developed illicit relations with one Raju, a close friend of her brother Manimaran (PW.2) and was pregnant at the time of marriage. The Trial Court accepted this version in spite of the fact that the medical evidence was otherwise. Dr. B.R.S. Kashyap (PW.17) mentioned in the post-mortem report (Ex.P-12) that the uterus was intact. Subsequently, an explanation was specifically sought on 2.2.1995 as to whether Shanthi was pregnant at the time of death. Dr. Kashyap (PW.17) opined that she was not pregnant at the time of post-mortem examination. Dr. Kashyap (PW.17) denied the suggestion that he had issued report (Ex.P-14) in collusion with the complainant to the effect that she was not pregnant.

20. The Trial Court placed reliance on the medical history (Ex.P-10) mentioned in the Accident Register of the hospital that Shanthi had 3 months pregnancy. We have examined the original documents also, there is nothing on record to show as at whose behest remarks had been recorded therein.

Thus, the finding of the Trial Court about pregnancy of Shanthi recorded by the Trial Court is not worth acceptance.

21. In the instant case, we have explained hereinabove that none of the contradictions found by the trial court could be labelled as major/material contradictions. Therefore, the finding of the trial court to the extent that there was material contradiction, is not worth acceptance.

22. The appellant-accused denied all the questions put to him in his examination under Section 313 Cr.P.C. and did not furnish any explanation whatsoever to any question. He did not give any version about the incident, rather pleaded a false defence that Shanthi, deceased, had developed illicit relationship with Raju, a friend of her brother Manimaran, (PW.2) and was pregnant before marriage. To question no. 32, as to whether he wanted to say anything, his reply was only 'No'.

23. It is obligatory on the part of the accused while being examined under Section 313 Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation even in a case of circumstantial evidence in order to decide whether or not the chain of circumstances is complete. When the attention of the accused is drawn to circumstances that inculcate him in relation to the commission of the crime, and he fails to offer an appropriate explanation, or gives a false answer with respect to the same, the said act may be counted as providing a missing link for completing the chain of circumstances. (Vide: Munish Mabbar v State of Haryana, AIR 2013 SC 912).

24. This Court in Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181 held as under:

“Undoubtedly, the prosecution has to prove its case beyond reasonable doubt. However, in certain circumstances, the accused has to furnish some explanation to the incriminating circumstances, which has come in evidence, put to him. A false explanation may be counted as providing a missing link for completing a chain of circumstances”.

(Emphasis added)

25. The prosecution successfully proved its case and, therefore, provisions of Section 113 of the Evidence Act 1872 come into play. The appellant/accused did not make any attempt, whatsoever, to rebut the said presumption contained therein. More so, Shanthi, deceased, died in the house of the appellant. He did not disclose as where he had been at the time of incident. In such a fact-situation, the provisions of Section 106 of Evidence Act may also be made applicable as the appellant/accused had special knowledge regarding such facts, though he failed to furnish any explanation thus, the court could draw an adverse inference against him.

26. In view of the above, the findings recorded by the Trial Court on each issue had been perverse and the High Court has rightly reversed the said findings. The conduct of the appellant/accused during the trial also disentitled him of any indulgence whatsoever.

The appeal lacks merit, and is, accordingly dismissed. The appellant- accused is on bail. His bail bonds stand cancelled. He must surrender within a period of four weeks from today failing which the III Additional Sessions Judge, Bangalore City, CCH No.25 shall take him in custody to serve out the remaining sentence. A copy of the order be sent to the learned Additional Sessions Judge for information and compliance.

.....J.
B.S. CHAUHAN)

(DR.

.....J.

(S.A. BOBDE)

NEW DELHI;
August 19, 2013
