State Of Karnataka vs K. Gopalakrishna on 18 January, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1014, 2005 AIR SCW 949, 2005 AIR - KANT. H. C. R. 650, (2005) 27 ALLINDCAS 607 (SC), (2005) 2 JT 389 (SC), 2005 (27) ALLINDCAS 607, 2005 (2) JT 389, 2005 (2) SLT 44, 2005 CRILR(SC&MP) 197, 2005 (1) SCALE 643, 2005 (9) SCC 291, 2005 SCC(CRI) 1237, 2005 CRILR(SC MAH GUJ) 197, (2005) 30 OCR 570, (2005) 1 DMC 245, (2005) 2 EASTCRIC 85, (2005) 1 HINDULR 474, (2005) 3 KANT LJ 167, (2005) 1 MARRILJ 565, (2005) MATLR 316, (2005) 1 RAJ CRI C 264, (2005) 2 RECCRIR 20, (2005) 1 SCJ 568, (2005) 1 CURCRIR 123, (2005) 1 SUPREME 735, (2005) 1 ALLCRIR 808, (2005) 1 SCALE 643, (2005) 52 ALLCRIC 309, (2005) 1 CHANDCRIC 215, (2005) 2 ALLCRILR 362, (2005) 1 CRIMES 271, 2005 (1) ALD(CRL) 568, 2005 (1) ANDHLT(CRI) 245 SC

Author: B.P.Singh

Bench: B.P.Singh, Arun Kumar

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           CASE NO.:
Appeal (crl.)  1204 of 1999

PETITIONER:
STATE OF KARNATAKA

RESPONDENT:
K. GOPALAKRISHNA

DATE OF JUDGMENT: 18/01/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
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J U D G M E N T B.P.SINGH, J.

This appeal by special leave has been preferred by the State of Karnataka against the Judgment and Order of the High Court of Karnataka at Bangalore dated December 18, 1998 in Criminal Appeal No.640 of 1996 whereby the appeal preferred by the respondent herein was allowed and he was acquitted of all the charges levelled against him. The respondent was tried by the Principal Sessions Judge, Belgaum in Sessions Case No.62 of 1994 charged of offences under Sections 302, 201 and 498A IPC, and alternatively under Section 304B IPC. The learned Sessions Judge by his Judgment and Order dated 27.6.1996 found the respondent guilty of the offence under Section 302 IPC and sentenced him to undergo imprisonment for life. He also found him guilty of the offence under

Section 201 IPC for which he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- and in default to undergo six months' simple imprisonment. Under Section 498A IPC, the respondent was sentenced to undergo two years' rigorous imprisonment. As noticed earlier, the High Court set aside the aforesaid Judgment and Order of the Sessions Judge.

An occurrence is said to have taken place in the morning of 22nd November, 1993. The case of the prosecution is that the respondent strangulated to death his wife Veena and thereafter set her on fire along with her infant child aged a year and a half. The respondent himself reported the matter to the local police making it appear that the deceased and her child had died in an accidental fire, but the post mortem disclosed that Veena had died of throttling and not on account of burn injuries suffered by her.

The facts of the case may be briefly noticed.

The deceased Veena was the daughter of Laxmamma (PW1) and was married to the respondent on June 3, 1991. Laxmamma (PW1) is a resident of Shimoga while the respondent at the time of his marriage was a resident of Gundlupet. A male child was born to the couple on March 7, 1992. The case of the prosecution is that the respondent out of greed had been pressing his wife (deceased) to get money from her mother so that he could start a business. There is evidence on record to indicate that the respondent then was employed in a private firm and was looking for better opportunities in life. Ultimately with the help of one Mr. Umapathy who was then a Special Deputy Commissioner, and who was another son-in- law of PW1, the respondent was able to secure the job of a Lecturer in the Government Pre University College at Nesargi in the district of Belgaum. On 26th July, 1993 respondent joined as a lecturer in the aforesaid college and started living there. On or about 25.10.1993 he came to the house of his mother-in-law at Shimoga and took away his wife Veena to Nesargi. It appears that a sister of the deceased namely Vijaya (PW11) was to get married and the betrothal ceremony was to be held on 25.10.1993 at Bangalore. In that connection most of the family members had gone to Bangalore but some of them remained at Shimoga to look after the house. The case of the prosecution is that despite the request made to the respondent, he refused to attend the marriage ceremony of Vijaya (PW11). Ultimately, the marriage of Vijaya (PW11) took place on 18.11.1993 with PW24 at Bangalore. Four days thereafter, on 22.11.1993 the occurrence took place in which Veena as well as her child lost their lives. The evidence on record discloses that in the morning at about 9.30 A.M. the respondent made an oral report to the Station House Officer at Nesargi to the effect that his wife had been burnt along with her child in an accidental fire. Two Head Constables of police came to the place of occurrence and pushed the door open. They tried to extinguish the fire. It was then that they discovered that Veena and her child were both dead and their bodies were burnt. After returning to the police station the report of the respondent was recorded which is Exhibit P-13 and thereafter a case was registered as Crime No.120/93 under Section 302 IPC.

On receiving the news about the incident Laxmamma (PW1), the mother of the deceased along with her son (PW2), her daughter (PW11) and her son-in-law (PW24)and other relatives rushed to Nesargi by car and saw the dead bodies of Veena and her child. The investigating officer (PW26) held inquest over the dead bodies of Veena and her child. He also seized a plastic can lying nearby

which contained some quantity of kerosene oil.

The post-mortem examination of the dead body of the deceased and the child was conducted by Dr. Munyyal (PW26) and another doctor namely Dr. Chavarad (not examined) on 23.11.1993 between 10.00 A.M. and 12.30 P.M. and 12.45 P.M. and 3.00 P.M. respectively. The post-mortem reports are Exhibit P-5 and P-6. According to the post-mortem report of Veena (deceased) Exhibit P-5, her body was burnt completely except back and buttocks and both the lower limbs below knee joints. On internal examination, it was found that the cornue of hyoid bone was fractured. The ...7/-

examination of the Larynx and Trachea disclosed that in the lumen of the trachea and bronchus carbon particles were not present. Both the lungs were shrunken and pale. The time of the death was estimated to be between 16 and 36 hours. The doctor further certified that after careful examination both external and internal of the dead body the cause of death was found to be asphyxia due to throttling.

In the case of her child the cause of death was found to be shock due to burns.

The prosecution examined a large number of witnesses to prove that the respondent used to illtreat Veena and used to pressurise her to get money from her mother. On this aspect of the matter, the witnesses examined by the prosecution are Pws 1, 2, 3, 4, 5, 11, 12, 13 and 21. The prosecution also examined evidence to prove that only an hour before the ...8/-

occurrence there was a quarrel between the deceased and the respondent and soon thereafter the occurrence took place. Such evidence was examined to bely the assertion of the respondent that he was not present in his house when the occurrence took place. The prosecution also relied upon the medical evidence to establish that the deceased had died on account of strangulation and was not the victim of accidental fire.

The Trial Court relying upon the evidence of prosecution witnesses came to the conclusion that the respondent was ill treating his wife and was making demands of money and had the motive to commit the offence. It further held that medical evidence on record clearly establish that the deceased had not died of burns but the cause of death was asphyxia caused by strangulation. It, therefore, held the ...9/-

appellant guilty of the offence of murder and other offences and convicted and sentenced him as earlier noticed.

The High Court has considered the evidence on record and reached the conclusion that the prosecution witnesses who deposed to the existence of motive were not reliable and their evidence was inconsistent. PW1, the mother of the deceased deposed that the respondent had been making demands for payment of Rs.10,000/- to Rs.15,000/- which after two years of the marriage was increased to Rs.1,00,000/-. PW2, the brother of the deceased has also deposed that the respondent had been pressing the deceased for bringing Rs.50,000/- from her mother. According to him, at Shimoga, just before he left for Nesargi, he had demanded a sum of Rs.10,000/-. PW3, Kamalamma

is a maid servant of PW1 serving her family for the last 20 years. Pws 4, 5 and 12 are the neighbours and family friends. They have ...10/-

also deposed that whenever Veena came to her mother's house she used to tell them about the demands being made by the respondent as also about the ill treatment meted out by him. PW4 stated that the respondent had demanded a sum of Rs.1,00,000/- for starting a business, as was told to him by the deceased herself. PW5 also deposed that he was told by the deceased that she was being ill treated by the respondent and that he was asking her to get Rs.10,000/- from her mother. Later on, he was pressing the deceased to bring a sum of Rs.1,00,000/-. PW11, the younger sister of the deceased namely Vijaya, stated that few months before the occurrence when she was in Bangalore, the respondent had made a telephone call and had demanded Rs.25,000/-. PW12 deposed that he did not know exactly what amount was demanded, but the deceased had complained to him about the harrasement meted out to her by her husband and the constant demand of money made by her husband. PW13 deposed that when the ...11/-

respondent and the deceased were going to Nesargi, PW2, brother of the deceased went to see them off at the bus stand. At that time a request was made to the Respondent to attend the marriage of Vijaya (PW11) but in reply he retorted that he will send the dead body of the deceased. No doubt, PW2 does not narrate these facts, but has stated that on that occasion the respondent had demanded a sum of Rs.10,000/-. In fact, he was also told by his sister Veena (deceased) that the respondent had told her that if his demands were not met, her photograph will also be kept next to the photograph of her father, meaning thereby that she will also be dead and her photograph kept next to the photograph of her deceased father. PW21 also deposed that whenever the deceased came to Shimoga, she complained about her ill treatment and demand of Rs.1,00,000/- made by the respondent.

Noticing the evidence on record, the High Court opined that there was no consistency as to the exact ...12/-

demand made by the respondent. The High Court, therefore, found the evidence of all these witnesses to be unreliable. We find this approach to be wholly unreasonable. Apart from the fact that the respondent used to press the deceased to get money from her mother, there is also clear evidence on record to establish the fact that she was being ill treated by the respondent. The evidence in that regard is consistent and has been deposed to by a large number of witnesses, some of whom were family members and others were the residents of Shimoga and were family friends. Even as to the amount demanded, there could be no consistency because if the respondent demanded different amounts at different times, the witnesses could not have deposed otherwise. The evidence on record clearly establishes the fact that the respondent had been making demands and the quantum differed from time to time. On some occasion he had demanded Rs.10,000/- and on other occasions Rs.15,000/- or Rs.1,00,000/-. It appears to us wholly ...13/-

unreasonable to reject the evidence of such witnesses merely on the ground that there is no consistency as to the exact amount demanded by the respondent.

There is yet another reason given by the High Court for rejecting this part of the prosecution's case. The High Court observed that no neighbour from Gundlepet was examined to prove the fact that the deceased was being ill treated by her husband. The High Court completely lost sight of the fact that the matrimonial home of the deceased was at Gundlepet and therefore, it was not possible for the prosecution to get witnesses from Gundlepet who would have supported the case of the prosecution. Moreover, the deceased had gone to Gundlepet as a newly married daughter-in- law and it was not expected, even if she was ill treated, to go about in the neighbourhood complaining against her husband. In any event this is not a good enough reason to reject the testimony of such a large ...14/-

number of witnesses who have deposed on this aspect of the case.

Another reason given by the High Court is that in Exhibit D- 3 a letter written by the deceased to her husband quite sometime back, there is no mention of any ill treatment meted out to her by the respondent, and that no other letter has been produced to show that she had even mentioned in any such letter that she was being ill treated. This approach of the High Court is again highly unreasonable. Merely because in one of the letters written to her husband she had not complained about ill treatment, is no ground to hold that she was never ill treated. We have read that letter from which it appears that it was one of those letters written by her in which there is no reference to bitterness in their marital life. However, it is not expected that in every letter that a wife writes to her husband, she must complain to him about his ill ...15/-

treatment. Merely because in one solitary letter there is no reference to ill treatment by the respondent, would be no ground to arrive at the conclusion that she was never ill treated by her husband, particularly in the face of evidence of a large number of witnesses. We, therefore, find no justification for the finding of the High Court that the deceased was not ill treated by the respondent, or that there was no motive to commit the offence.

As far as medical evidence is concerned, the High Court rejected the evidence of the doctor (PW6) who had conducted the post mortem examination of the dead bodies of the deceased and her child. The reasoning of the the High Court appears to us to be rather strange. The High Court noticed the fact that in the post mortem report the cause of death was mentioned to be asphyxia due to throttling. While deposing in Court PW6 supported his post morterm ...16/-

report. He asserted that the cause of death was asphyxia due to throttling, and the burns seen were post mortem burns. He further deposed that the throttling of the neck could have been done by using a rope or by any forceful action on the neck, like pressing. He further deposed that he found the burn injuries to be post mortem since (i) burnt blebs were present filled with air (ii) in the lumen of the trachea and bronchus carbon particles were not present and the lumen was pale. He also asserted that on account of fracture of the cornue of hyoid bone and absence of carbon particles and fumes in the trachea and bronchus, he was of the opinion that death of the deceased Veena was due to throttling.

If the evidence of the doctor (PW6) is fairly read, it will appear that in his opinion the death was on account of asphyxia caused by throttling. This conclusion was supported by the fact that there was

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fracture of the cornue of the hyoid bone. It is well accepted in medical jurisprudence that hyoid bone can be fractured only if it is pressed with great force or hit by hard substance with great force. Otherwise the hyoid bone is not a bone which can be easily fractured. Moreover, the absence of carbon particles and fumes in the trachea and bronchus lead to the irresistible conclusion that the deceased must have died before she was set on fire. Some amount of carbon particles and fumes would have certainly been found in the trachea and bronchus if she were alive when set on fire. The High Court, in our view, has completely misread the evidence of the doctor. Rather than considering the reasons given by the doctor for reaching the conclusion that the deceased had died of asphyxia caused by throttling, the High Court over emphasised that one part of a statement made by the doctor that the throttling of the neck could have been done by using a rope, or by any forceful action on the ...18/-

neck like pressing. The High Court completely ignored the latter part of the opinion, and proceeded to examine the evidence as if in the opinion of the doctor throttling could be caused only with the aid of a rope. The High Court referred to the evidence on record and found that there was no evidence to prove that the deceased had been strangulated with a rope. There is no evidence to prove that a rope was found anywhere near the place of occurrence. It rejected the evidence of PW2, the brother of the deceased who had stated that he had seen a nylon rope lying nearby. It, therefore, reached the conclusion that the prosecution case was not consistent with the medical evidence on record, because no rope was found which could substantiate the prosecution case that she had been strangulated with a rope. The High Court lost sight of the fact that there was no eye-witness of the occurrence. The medical evidence on record disclosed that there was a fracture of the hyoid bone of the ...19/-

deceased and there was complete absence of carbon particles or fumes in the trachea or bronchus. No doubt, the doctor stated that a person may be strangulated with the help of a rope or by pressing the neck. The doctor did not depose that this was a case where the deceased must have been strangulated with the aid of a rope, because admittedly it is not the prosecution case that any ligature mark was found. On the contrary the case of the prosecution was that she had been throttled by forceful pressing of her neck by the respondent. We are surprised that the High Court has not cared to even discuss the latter part of the doctor's opinion namely, that strangulation may result if the neck is pressed with considerable force. The High Court has not even cared to notice the fact that the hyoid bone was found to be fractured and there was complete absence of carbon particles or fumes in the trachea and the bronchus. This was the most crucial finding of the doctor (PW6) but ...20/-

unfortunately this has been completely ignored. There is not a word in the judgment of the High Court to satisfy us that the High Court was concious of the fact that the injuries found on the person of the deceased were consistent only with the hypothesis that she must have died before she was burnt. The High Court has considered several authorities on medical jurisprudence and has come to the conclusion that some of the features which are found in the case of death by strangulation were not found in this case. It is not always possible to find all the features in a given case particularly in a

case where the body is burnt after killing. PW6, the doctor who conducted the post mortem examination was categoric in stating that the fracture of the hyoid bone and the absence of carbon particles and fumes in the trachea and bronchus did establish the fact that she must have died of asphyxia caused by strangulation before she was burnt. There is no reason recorded in the judgment of the ...21/-

High Court to reject this assertion. We are of the view that these findings of the doctor are consistent only with the fact that the deceased was dead before she was burnt. In the facts of the case, the respondent having been seen in the house only little before the house was put on fire, the evidence implicating him in the commission of the offence is conclusive. The High Court rejected the evidence of the doctor observing that there was no corroboration from surrounding circumstances, completely ignoring the findings of the doctor which we have discussed above.

The High Court then discussed some discrepancy about two types of reports having been recorded in the police station. We have considered the material on record and we find that there may have been some confusion about the recording of the case in the police station because earlier an oral report had been ...22/-

made and later a written report was made and therefore, initially a case was registered as UDR 27/93 and another Case being Cr.No.120/93 was registered later when it came to light that it was not a case of accidental fire but a case of murder, and only to destroy the evidence the deceased was set on fire.

The High Court has also made much of the fact that one of the daughters of Laxmamma (PW1) who was residing at Bangalore and who was the person who had telephonically informed her friends and relatives about the death of the deceased, was not examined as a witness in this case. It does appear from the evidence that she had made calls to her family members and told them that the deceased and her child had sustained burn injuries due to kerosene stove bursting. We do not attach much importance to this evidence because Indu, the second daughter of PW1 who was residing at ...23/-

Bangalore was not an eye-witness. She had come to learn about burn injuries suffered by the deceased and her child and she immediately passed on that information to her mother and others. The mere fact that she had mentioned about injuries sustained by bursting of kerosene stove does not help the case of the defence because Indu passed on such information as she may have received. Initially, the incident was sought to be made out as a case of accidental fire, but it was later revealed that it was a case of murder. In this view of the matter, we do not attach any significance to the so called discrepancy found by the High Court. Moreover, the adverse inference drawn by the High court on account of non examination of Indu, in our view, is not warranted. The prosecution relied upon an extra judicial confession said to have been made by the respondent before PW7. The High Court rejected the said evidence and we also do not attach much weight to the alleged extra judicial confessional ...24/-

statement made by the respondent. Nor do we attach much significance to the fact that, according to the prosecution, the respondent was absconding. Even if the evidence in this regard is ignored, the

remaining evidence on record clearly proves the complicity of the respondent in the murder of his wife Veena.

We are concious of the fact that we are dealing with an appeal against an order of acquittal. In such an appeal the Appellate Court does not lightly disturb the findings of fact recorded by the Court below. If on the basis of the same evidence, two views are reasonably possible, and the view favouring the accused is accepted by the Court below, that is sufficient for upholding the order of acquittal. However, if the Appellate Court comes to the conclusion that the findings of the Court below are wholly unreasonable or perverse and not based on the evidence on record, or suffers from serious illegality ...25/-

including ignorance or misreading of evidence on record, the Appellate Court will be justified in setting aside such an order of acquittal. We find this case to fall under the latter category. We find no rational justification for the conclusion reached by the High Court. The High Court has misread the evidence on record and has completely ignored the relevant evidence on record which was accepted by the Trial Court. We, therefore, allow the appeal, set aside the impugned judgment and order of the High Court and restore the judgment and order of the Trial Court. The respondent shall be taken into custody forthwith to serve out the remainder of the sentence. His bail bonds are cancelled.