

State Of Karnataka vs Khaja Hussain on 9 November, 1982

Equivalent citations: (1982)3SCC456, 1983(15)UJ36(SC), AIRONLINE 1982 SC 56, AIRONLINE 1982 SC 47

Bench: A. Varadarajan, V.D. Tulzapurkar

ORDER

It is not possible to sustain either the discharge order passed in favour of the respondent by the learned Sessions Judge under Section 227 Cr.P.C. nor the confirmation thereof by the High Court against which the present appeal is preferred by the State. It is clear from the recitation of the facts given by the learned Sessions Judge that atleast two highly incriminating circumstances stand out very clearly from the material on record, namely, (i) that on the morning of 18th January 1977 the respondent and his wife (since deceased) were last seen together going to the hut and (ii) that later on the respondent was seen leaving the hut at about 11 a.m. with blood stained cloths on his person and in that condition he himself went to the police station. Admittedly the wife was found lying dead inside the hut. Apart from the confessional statement made by the respondent-accused to which even if no importance whatsoever is attached, these two circumstances clearly make out a prima facie case against the accused for the charge of murder and it will be for the accused to explain how death ensued inside the hut as also the incriminating circumstances. It cannot be said that there was no sufficient ground for proceeding against the accused under Section 227. It may be pointed out that the High Court felt that the statement of the doctor with whom the deceased woman was working and from whose dispensary she had returned to the hut contradicted the material referred to above because the doctor in his statement to the police had stated that it was Rabi who had taken her from the dispensary. In our view there is no contradiction whatsoever for, the doctor if at all would be referring to the stage when he saw Rabi and the deceased woman leaving his dispensary but it is possible that after the two had left the dispensary the respondent- accused along with Kasim Ali might have accompanied his wife (the deceased) to the hut. We do not feel that the doctor's statement casts any doubt upon the two incriminating circumstances which have clearly come on record. In any case it is impossible to say that there was no sufficient ground for proceeding against the respondent-accused. The order of discharge passed by the learned Sessions Judge and the confirmation thereof by the High Court are therefore, set aside and the case is sent back to the trial court for disposal according to the law.