

CRLA No. 1924 of 2005

State of Karnataka v. Syed Rasool

2010 SCC OnLine Kar 562 : (2014) 2 Kant LJ 194

(BEFORE K. SREEDHAR RAO AND B.V. PINTO, JJ.)

State of Karnataka, by Masthi Police Appellant

Sri. H.S. Chandramouli, Spp

v.

Syed Rasool, S/o Syed Azeez, Aged about 31 years, Muslim,
Working in Poultry-Farm, Shaheed Seeds Poultry Farm,
Theerthabandahatti, Near Masthi Hobli, Malur Taluk
Respondent

Sri. Amith R. Deshpande, Adv. as Amicus Curiae

CRLA No. 1924 of 2005

Decided on October 1, 2010

JUDGMENT

This appeal is filed by the State against the order dated 28-6-2005 passed by the Presiding Officer and Addl. Sessions Judge, Fast Track Court-VII, Kolar in SC No. 205/2000 acquitting the accused of the offence U/s. 302 of IPC.

2. The Masthi Police have filed charge sheet against the respondent alleging that he on 11-6-2000 at about 8.30 p.m. at Thirthabandanahalli village within the limits of Masthi Police Station picked up quarrel with his wife deceased Faiza Banu and committed her murder by intentionally of knowingly causing her death by pouring kerosene on her by and by lighting fire, as a result of which she has succumbed to the burn injuries. Therefore, the accused is alleged to have committed the offence U/s. 302 of IPC.

3. In order to prove the case, the prosecution has examined in all 24 witnesses and got marked Ex. P 1 to Ex. P 24 and produced MO 1 and MO 2. The defence of the accused was one of total denial. After hearing the prosecution and the defence, the learned Sessions Judge pleased to acquit the respondent of the offence punishable U/s. 302 of IPC.

4. PW1 - Dr. Ashok Sharaaf was the then Senior Specialist at Tumkur District Hospital. He has certified that the deceased died on 3-8-2000 while taking treatment.

5. PW2 - Muninanjappa, PW3 - Hyder Saab and PW4 - Thimmarayappa have turned hostile to the case of the prosecution. PW5 - Dr. Surya Prabha was working as a Senior Specialist in General Hospital, Pavagada, Tumkur District at the relevant period. She has stated that she has conducted Post Mortem examination on the deceased Faiza Banu on 5-8-2000. She has stated that the death is due to burn injuries. She has issued the Post Mortem Report in this case.

6. PW6 - Abdul Aseem has taken the deceased to the hospital. PW7 - Syed Zia and PW8 - Abeeb Unnisa have turned hostile to the case of the prosecution. PW9 - Sundar is the ASI who has received the death intimation - Ex. P 1 from the Government Hospital, Tumkur. PW10 - Narayanappa has taken the articles to FSL, Bangalore. PW11

- Subramanyam is the retired ASI who has received the file on 18-6-2000 in respect of the incident and thereafter he has recorded the statement of the mother of the deceased and received the records from the hospital. He has visited the scene of occurrence and prepared panchanama and seized half-burnt clothes of the deceased and also the kerosene can as per MO 1 to MO 3 under spot mahazar Ex. P 2.

7. PW12 - C. Krishnappa was P.S.I. at the relevant time. He has transmitted FIR - Ex. P 16 to the Court. PW13 - Ramaswamy is the inspector of Vidyaranyapura P.S. and was the Circle Inspector of Masthi during the relevant period. He has stated that he has conducted the investigation in this case and filed the charge sheet.

8. PW14 - P.R. Basavaraju is the Tahsildar and he has conducted the inquest proceedings on the dead body of the deceased and has recorded the statement of the father, mother and brother of the deceased and has given opinion that the deceased died due to burn injuries sustained by her.

9. PW15 - Aslampasha is the signatory to Ex. P 20. PW16 - Mamthaz is the relative of the deceased. She has stated that the deceased has sustained injuries and thereafter she has visited the deceased. It is in her evidence that the deceased has stated that the accused has set fire on her. PW17 - Dilshad is the mother of the deceased. She has stated regarding the marriage of her daughter with the accused. She has further stated that after receipt of the information regarding the setting fire on her daughter she went to Masti and brother of the accused informed her that the injured is admitted in a Nursing Home near Tanny road, Bangalore. Therefore she visited the said hospital where she observed that her daughter has sustained burn injuries on her back and entire body. Thereafter she told to her husband. It is in her evidence that her daughter has informed her that her husband had set fire on her and after two days she was shifted to Tumkur General hospital and one day at 5 p.m. her daughter succumbed to the injuries. She has given statement to the Tahsildar in that respect. She has stated that the accused suspected the fidelity of his wife i.e., the deceased. Therefore he had set fire to her.

10. PW18 - Moahlla has visited the injured in the hospital and has given statement to the Tahsildar. PW19 is another witness who has given his statement to the Tahsildar. PW21 - Dr. Narayana Reddy has stated that on 10-2-2000 the deceased has come to his clinic for treatment for burn injuries. He has given first aid treatment and referred to Bangalore for further treatment.

11. PW22 - Dr. Chand Pasha is the director in Mediscon Nursing Home, Bangalore. He has stated that on 11-6-2000 the deceased was admitted to his hospital at 12 a.m. (mid night) and she was discharged on 6-7-2000. In the meantime the patient had recovered about 60% of burn injuries. He has given statement to the police. PW23 - M. Nagaraj is the inspector of police. He has stated that he has transmitted the file for investigation in this case to Masthi Police Station. PW24 - Muni Mylarappa is the retired ASI for K.G. Halli P.S. during the relevant period. He has registered the case as per Ex. P 10 statement given by Dilshad at Madiscon Hospital and later recorded the statement of the injured Faiza Banu.

12. It is from the evidence of these witnesses the learned Sessions Judge has found that the prosecution has not proved the case beyond reasonable doubt.

13. Heard Sri Sampangiramaiah, learned HCGA for the State and Sri Amith Deshpande for the respondent.

14. It is found from the records and also on careful scrutiny PW22 who is running a nursing home in Bangalore has stated that the deceased was admitted in his nursing Home on 11-6-2000 at 12 a.m. in the mid-night. It is in the evidence of PW22 that there is nothing to suggest that the history of pouring kerosene and setting fire was given nor he has treated the case as medico legal case. He has further stated that from 11-6-2000 till 6-7-2000 the injured was in his hospital and that the patient had recovered about 60% of the burn injuries. It is clear that the patient was in a position to talk and to give statement during the said period. However, no statement has been recorded by any police officer nor complaint was given by any person till the patient was in his hospital from 11-6-2000 to 6-7-2000 i.e., almost about 25 days. Further it is seen from the medical records as per Ex. P 19 and P 21 that the history is written as "history of burns". No where it is mentioned that the injured was set fire by any person. Further the document Ex. P 21 further indicates that the patient sustained accidental burns at 8.30 p.m. on 10-6-2000 which is noted in the Mediscon Nursing Home, Bangalore. Under these circumstances it is clear that the case of setting fire is only an after thought. Therefore, the finding of the learned Sessions Judge that the prosecution has not proved case beyond reasonable doubt appears to be sound and proper. We do not find any reason to up set the well considered order of acquittal passed by the learned Sessions Judge. Hence, the appeal deserves to be dismissed. Accordingly, the appeal is dismissed.

Fee of Amicus Curie is fixed at Rs. 7,000. The State shall pay the fee.

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