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Cr1.A.No. 309 OF 2003

ITEM No.104

Court No.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.309 OF 2003

Onkarappa and Anr.Appellant (s)

VERSUS

State of Karnataka Respondent (s)

(With application for bail)

Date : 17/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mrs. D.V. Padma Priya,Adv.(A.C.)(N.P.)

For Respondent (s)Mr. Siddhartha Dave,Adv.

Mr. Sanjay R. Hegde,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed to the extent indicated in the signed order.

The accused-appellants shall be set at liberty forthwith unless required to be in custody in connection with any other case.

So far as A-2 is concerned, it has to be verified as to whether he has served the sentence which was imposed on him and if he has not served the whole sentence, he shall continue to be in custody to undergo the remaining part of the sentence.

(Neena Verma)

(Kanwal Singh)

Court Master

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.309 OF 2003

Onkarappa and Anr.

...Appellants

Versus

State of Karnataka

...Respondent

O R D E R

The appellants questioned the judgment of a Division Bench of the High Court of Karnataka which, by the impugned judgment, reversed the findings of innocence recorded by the Trial Court so far as the appellants are concerned and held them guilty for offences punishable under Section 302 and 120-B of the Indian Penal Code, 1860 (in short 'the IPC). They were sentenced to undergo imprisonment for life.

Background facts giving rise to the trial of the accused persons are essentially as follows:- Jayalakshamma (hereinafter referred to as 'the deceased') was married to accused-appellant No.1. PW-1 Betappa was Uncle of the deceased and took care of her as her parents had died when she was a child. After the marriage, deceased was living with A-1 and had come to PW-1's village to attend a festival. After the festival, the deceased, A-1 and PW-2 Hanumanthamma went to watch a movie in the night show. At about 1.00 AM, A-1 returned weeping and informed PW-1 that when they were returning from the movie and approached the tank bund of the village, some unknown persons way-laid them and dragged the two ladies towards the garden. Immediately, PW-1, along with some villagers went to the spot but could not trace either the deceased or PW-2. On the next day morning, again a search was made and the dead body of the deceased was found in the water tank. Information was lodged with the police alleging that A-1, in connivance with PW-2, had killed the deceased on account of their illegitimate relationship. Investigation was undertaken and on completion thereof, charge-sheet was placed.

Fifteen witnesses were examined to further the prosecution version. PW-2 was projected as an eye-witness. There was also recovery of a pair of earrings from A-2 which belonged to the deceased. The Trial Court found the evidence of PW-2 to be unreliable. However, taking note of the recovery, convicted A-2 for offences punishable under Section 411 IPC. Both the accused were, however, acquitted of the charges relating to Sections 302 and 120-B IPC. The State preferred an appeal before the High Court questioning correctness of the judgment. The High Court came to hold that the evidence of PW-2 was reliable and credible and the Trial Court was not justified in directing acquittal.

Though Mrs. D.V. Padma Priya, learned counsel was appointed as the Amicus-Curiae, none was present when the appeal was taken up. We noticed that on 05.1.2003, six weeks' time was granted to the learned Amicus-Curiae to file necessary translated copies of the evidence.

We have heard learned counsel for the respondent-State and have gone through the records. We find that the evidence of PW-2 does not inspire confidence. The prosecution version from the beginning was that A-1 and PW-2 were responsible for the death of the deceased. Later on, PW-2 appears to have surfaced to state that she had seen part of the occurrence. Her conduct was most unusual and she did not even inform anybody for a petty long time. Even otherwise, as noticed by the Trial Court, in the cross-examination, she accepted that her version was in line with what the police had suggested to her to be spoken. This relevant factor seems to have been ignored by the High Court. When evidence of PW-2 is kept out, there is practically nothing to connect both the appellants with the crime. Therefore, the judgment of the High Court is set aside and that of the Trial Court is restored. The accused-appellants shall be set at liberty forthwith unless required to be in custody in connection with any other case.

So far A-2 is concerned, it has to be verified as to whether he has served the sentence which was imposed on him for the commission of offence relating to Section 411 IPC and if he has not served the whole sentence, he shall continue to be in custody to undergo the remaining part of the sentence.

The appeal is allowed to the extent indicated above.

.....J.

(DORAISWAMY RAJU)

.....J.

(ARIJIT PASAYAT)

New Delhi,
December 17, 2003.