

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 760 OF 2005

REVUTAPPA ... APPELLANT

Versus

STATE OF KARNATAKA ... RESPONDENT

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. This appeal is forwarded to this Court by the Jail Authorities. It is directed against the judgment and order dated 8/10/2012, passed by the Division Bench of the Karnataka High Court in Criminal Appeal No.1721 of 2001, whereby the High Court confirmed the judgment of the Sessions Court convicting the appellant for offences punishable under Sections 302, 323, 506, 201 read with

Section 34 of the Penal Code and sentencing him, inter alia, to life imprisonment.

2. The prosecution story could be shortly stated. Complainant Siddakka was married to the appellant, five years prior to 25/8/2000 i.e. from the date of the incident. After the marriage, the appellant started suspecting Siddakka's fidelity and when she gave birth to a male child, he told her that the child is not of his lineage and is an illegitimate child. Prosecution story further goes on to say that during the relevant time, Siddakka and the appellant were staying in a hut situated in the land belonging to the appellant along with their child. On 25/8/2000, when Siddakka was plucking the green gram fodder along with her son and the appellant was ploughing the other portion of the field, she saw the child going towards the appellant. The appellant stopped ploughing and took the child towards the farmhouse. After sometime, when Siddakka could not find her child, she went near the hut. She overheard the appellant telling his mother that he had thrown the child in

the well of Allisab. On hearing this, she ran towards the well of Allisab, picked up the dead child from the well and returned to the hut. The appellant threatened her with dire consequences if she disclosed the incident to anyone. She was forced to tell others that the child died of snake bite. Thereafter the child was buried. Out of fear she did not disclose the incident to anyone. On 27/8/2000, when her close relatives came from Jadarbabaladi to console her, she mustered courage and told them that the appellant had thrown her child in the well which resulted in his death. They immediately took her to the Police Station and lodged a complaint. Offences under Sections 323, 302, 201, 506 read with Section 34 of the IPC were registered. The body of the deceased child was exhumed after getting appropriate permission. The dead body was sent for post-mortem examination. The post-mortem report stated the cause of death as "asphyxia as a result of drowning".

3. On completion of investigation, the appellant was charged and tried for offences punishable under Sections

498A, 323, 302, 201, 506 read with Section 34 of the IPC along with his mother Kallawwa who was arraigned as Accused 2. The prosecution examined 19 witnesses. It's most important witness is PW-1 Siddakka, who lost her one-and-half year old son because of the appellant's cruel act. Her evidence is corroborated by her brother PW-10 Chanabasappa and uncle PW-13 Ishwarappa. The appellant did not adduce any evidence. He denied all allegations. The defence suggested that the child saw a peacock; followed it; went to the field where the well was situated, fell into it and died.

4. The trial court acquitted Accused 2, the mother of the appellant of the offence punishable under Section 302 of the IPC. It, however, convicted the appellant for the said offence and sentenced him to life imprisonment. Both of them were found guilty of offences punishable under Sections 323, 506, 201 read with Section 34 of the IPC and were sentenced for the said offences. On appeal, the High Court set aside the conviction and sentence of Accused 2. The appellant's

conviction and sentence was, however, confirmed in its entirety. Hence, this appeal.

5. Shri Mithilesh Singh, learned counsel for the appellant submitted that the prosecution case is based on circumstantial evidence. However, the circumstances do not point unerringly to the guilt of the appellant. They may at the most raise some suspicion, but suspicion, however, strong cannot take the place of proof. Counsel submitted that the court will have to cautiously examine each circumstance for the purpose of recording a verdict of guilty or giving benefit of doubt to the accused. In support of his submissions, counsel relied on **Padala Veera Reddy v. State of Andhra Pradesh & Ors.**¹ and **Tarseem Kumar v. Delhi Administration**². Shri V.N. Raghupathy learned counsel for the State of Karnataka, on the other hand, submitted that the evidence adduced by the prosecution leaves no scope for doubt about the appellant's involvement

¹ 1989 Supp. (2) SCC 706

² 1994 Supp. (3) SCC 367

in the crime in question. Counsel submitted that the appeal be, therefore, dismissed.

6. There is no dispute about the fact that the child died due to drowning. Medical evidence is clear on this point. The question is whether the death was homicidal or accidental. PW-1 Siddakka has, in her evidence, described how she was ill-treated in her matrimonial house. The appellant disowned the paternity of the child. After the birth of the child, PW-1 Siddakka was not allowed to perform 'Simant' ceremony of her child. She went to her parent's house. Her father performed the ceremony and named the child 'Arun Kumar'. Thereafter, for one year, she was in her parent's house. She went to her matrimonial house along with her uncle PW-13 Ishwarappa. She was not allowed to stay there. She went back to her parent's house. Thereafter, demand for money was made. PW-1 Siddakka's parents paid the amount. PW-1 Siddakka went back to the appellant's house because the appellant assured her that he would treat her well. The appellant took her and the child to

stay with him in the farmhouse. The harassment, however, continued. On the day of the incident, when the appellant and PW-1 Siddakka were working in their field, she saw the appellant taking the child towards their hut. After 15-20 minutes, she went to the hut to see where her child was. She heard the appellant telling his mother that he had thrown the child in the well. She rushed to the well and removed the dead child from the well. The appellant threatened her and told her not to disclose the true story to anyone. He asked her to tell the people that the child died due to snake bite. Out of fear, PW-1 Siddakka did not inform anyone about the incident. The child was buried. It is only when her relatives came to console her that she told them the true story. A complaint was then lodged. Investigation was started. After completion of investigation, the appellant was tried as aforesaid.

7. We have gone through the evidence of PW-1 Siddakka. Her evidence inspires confidence. We have noted that after seeing her son's clothes, she began to weep in the court and

sat down for sometime without saying anything. A mother would never allow the person who killed her child escape punishment. She would also not involve a wrong person. We place implicit reliance on PW-1 Siddakka's evidence.

8. PW-1 Siddakka's evidence is corroborated by the evidence of her brother PW-10 Chanabasappa and her uncle PW-13 Ishwarappa, in all respects. We have noted that some of the witnesses have turned hostile. But that does not, in any way, affect the substratum of the prosecution story. The prosecution has successfully proved that there was a strong motive to kill the child because the appellant suspected the fidelity of PW-1 Siddakka. He had disowned the paternity of the child. The prosecution has also proved that the child and the appellant were last seen together. Most clinching circumstance in this case is the conduct of the appellant. PW-1 Siddakka's parents were informed about the death of the child after the burial. She was threatened and told not to tell the true story to anyone. She was asked to tell everyone that the child died due to snake bite. This

conduct of the appellant, examined in the background of the strong motive and the fact that he was last seen with the child, establish that it is he, who threw the child in the well. The medical evidence supports the prosecution case that the child died due to drowning and not due to snake bite.

9. It is surprising how defence suggested that the child went after a peacock; fell in the well and died. The well was an unused well. The scene of offence panchnama discloses that grass and thorny bushes were surrounding it. It would be impossible for a one-and-half year old child to walk such a distance, jump over the thorny bushes and fall in the well. This is, indeed, a far-fetched and astonishing suggestion. Besides, in his statement under Section 313 of the Cr.P.C., the appellant has not come out with this explanation. The child was last seen with him. It was for him to explain how the child fell in the well. He has not done so. He has not discharged the burden which had shifted to him under Section 106 of the Evidence Act. Adverse inference needs to

be drawn against him. In fact, this silence forms an additional link in the chain of circumstances.

10. It is true that in a case based on circumstantial evidence, the court has to be cautious. Each circumstance must be carefully examined. The chain of circumstances must be complete and it must be unerringly point to the guilt of the accused. It is also true that suspicion, however strong, cannot take the place of proof. Having examined this case in light of the settled principles laid down in **Padala Veera Reddy** and **Tarseem Kumar**, we are of the opinion that the prosecution has successfully established its case. The circumstances have been fully established. The established facts are consistent only with the hypothesis of the guilt of the appellant. There is absolutely no scope for any reasonable ground for a conclusion consistent with the innocence of the appellant. There is no merit in the appeal. The appeal is dismissed.

.....J.

(Sudhansu Jyoti Mukhopadhyaya)

.....J.
(Ranjana Prakash Desai)

New Delhi;
January 24, 2014.

SUPREME COURT OF INDIA



JUDGMENT