

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

*** THE HON'BLE MRS. JUSTICE ANIS**

+ CRIMINAL APPEAL No.753 of 2010

% 12.08.2015

Smt.Sravanthi @ Kalyani

....Appellant

v.

\$ State of A.P.,

Rep. by Public Prosecutor,

High Court, Hyderabad.

.... Respondent

! Counsel for the Appellant : Smt.C.Vasundhara Reddy

Counsel for Respondent: The Public Prosecutor (TG)

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CRIMINAL APPEAL No.753 of 2010

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

This appeal is preferred by the sole accused in S.C.No.76 of 2009, who was tried by the VI Additional District and Sessions Judge (Fast Track Court) Nizamabad at Kamareddy for the offence under Section 302 IPC and was convicted of the same and was sentenced to undergo simple imprisonment for Life and was imposed a fine of Rs.1,000/- in default of the payment of the same, was ordered to suffer simple imprisonment for a period of one month. The appellant was also found guilty for the offence under Section 201 IPC and was sentenced to undergo simple imprisonment for a period of one year. The period of remand undergone by the appellant from 21.12.2008 to 17.04.2009 is ordered to be set off.

The case of the prosecution is that the accused was the wife of the deceased and that their marriage took place on 03.12.2008 and in pursuance of the said marriage the accused started living with the deceased at his home, however, because of the past love affair between the accused and L.W.12, she was not happy that her parents got her married to the deceased. Therefore, she has planned to do away with the life of the deceased, so that she can go back to the company of L.W.12.

On behalf of the prosecution P.Ws.1 to 13 are examined, Exs.P.1 to P.16 are marked and further a jute rope said to have been used for the commission of the offence was also recovered and marked as M.O.1.

P.W.1 is the father of the deceased and consequently the father-in-law of the accused, whereas P.W.2 is the mother of the deceased. P.W.1 has stated about the marriage that took place

on 03.12.2008 between the deceased and the accused and that

on 19.12.2008 after consuming food the accused and the deceased went into their room for sleeping and that at about 11.30 in the night the accused came to them (P.Ws.1 and 2) and woke them up and informed that the body of their son, the deceased, is very cold and hence P.Ws.1 and 2 rushed to the room where the deceased was found lying on the cot and that they have taken him in an auto to the Government Hospital at Kamareddy and on examination of the body, the Medical Officer, in-charge of the hospital, has declared that their son is brought dead and hence P.W.1 gave the complaint, Ex.P.1.

It is the specific case of the P.W.1 that on the day of the incident except the accused and their deceased son, no one else stayed in that room.

P.W.2 virtually repeated the narration of the incident in the same manner as P.W.1 has done. However, P.W.2 has stated that the Doctor has informed them about the injuries on the neck of the deceased and hence they (P.Ws.1 and 2) noticed the injuries on the neck of the deceased. P.W.2 has also stated that there arose differences between the accused and the deceased from the date of their marriage.

P.W.3 is the daughter of the co-brother of P.W.1. P.W.3 has stated that on the day of the incident i.e. on 19.12.2008 she was sleeping in the same room in the house where P.Ws.1 and 2 were sleeping and that at about 11.30 in the night, the accused came from the other room and woke them up and informed that the body of her husband, the deceased, was felt to be cold.

P.Ws.5 and 6 are examined as the accused is stated to have made an extra-judicial confession about the commission of offence to them.

P.W.7 was examined as he was the driver of the auto in which the deceased was

taken to the Government Hospital at Kamareddy. P.W.7 has also deposed that he has observed the scratch mark around the neck of the deceased.

P.W.8 was a witness to the inquest.

P.W.9 was a panch witness for the scene of offence panchanama.

P.W.10 was examined as P.Ws.5 and 6 went to him on the next day and informed about the confession made by the accused about the killing of her husband, the deceased and on the request of P.W.5, it is P.W.10, who drafted Ex.P.11 and on the request of P.W.6, he drafted Ex.P.12. P.W.10 also deposed that the accused and her aunt were found with the police and upon enquiry the accused confessed about the love affair, which she had with one other individual (L.W.12) and because of the said factor, the accused has developed dislike towards her husband and hence she has killed her husband. P.W.10 further stated that the accused has volunteered to show them the rope used by her for committing the offence. When P.W.10 went along with the accused, she has shown to them the place where she has hidden the rope used by her for commission of the offence and the police seized M.O.1 from beneath the T.V. set available, outside the room to which the accused and the deceased retired to bed in the house of P.W.1. Thus, P.W.10 is a witness for recovery of M.O.1 and Ex.P.14 is the seizure panchanama and he is also a witness to Ex.P.13 confessional panchanama.

P.W.11 is the investigating officer, who carried out the investigation into the crime and he is the one who has effected the recovery of jute rope, M.O.1 used by the accused for commission of the offence.

P.W.12 was the Doctor attached to the Government Hospital at Kamareddy, who conducted the postmortem examination on the dead body of the deceased, where he found a ligature mark on the front side of the neck nearly 39 cms around the neck with knot on the left side. He has found that beneath the skin of the neck, muscles are congested and a small blood clot was also found.

P.W.13 is the Sub-Inspector of police, who has registered the Ex.P.1, FIR.

The whole case of the prosecution centers around the circumstantial evidence as there are no eyewitnesses to the commission of the offence. The strongest circumstance that is urged against the accused was her presence along with the deceased in the same room, in the house of P.W.1. There is no denial of the fact that the accused was married to the deceased hardly a fortnight before the day of the incident. Therefore, there was nothing unnatural for the presence of the accused in a separate room along with the deceased in the matrimonial home of P.W.1.

It was not in dispute that the accused is 19 years old at the time of the incident, whereas the deceased is aged about 26 years (as per Ex.P.15, Postmortem Examination Report) and that he is an able-bodied person. Therefore, for committing an offence like the one under Section 302 IPC by strangulation and that too by using a jute rope, M.O.1, it would have been extremely difficult for a 19 years old lady to have strangled the deceased all by oneself. Even if, we were to assume that the Jute rope, M.O.1, which is a very commonly available jute rope in almost every household, where normally such jute ropes are used for binding certain articles or for bundling them together, there should have been greater pressure needed to be applied for strangulating the deceased. Even if, we were to assume that M.O.1 may have been intertwined putting together several of its layers to form into a strong and firm rope, but for effectively strangulating a person extreme force is required to be applied by pulling the both ends of the rope in the opposite directions, so that knot applied gets tightened and in that process victim gets strangled and dies. If a person is getting strangled, even if one is in deep sleep, he would have made some attempt or the other to extricate himself from the tightening noose around his neck and consequently he would have offered some resistance to the assault that was unleashed around his neck. Unfortunately, P.Ws.1, 2 and 3, who are the persons available in the immediate vicinity of the scene of offence have not noticed any such signs of struggle or resistance offered by the deceased. We are, therefore, of the opinion that one person alone could not have strangled another person who is strong enough quietly and very effectively too. If there was any struggle or resistance offered by the deceased, the unnatural sounds of the deceased in that

process could not have gone unnoticed or unheard by P.Ws.1, 2 and 3. This apart, the accused would not have woken up P.Ws.1 and 2, at the dead of night if she had played a role in commission of the offence. There was no necessity for her to wake up P.Ws.1 and 2 at 11.30 in the night and inform them that the body of their son, the deceased, had turned dead cold. The natural conduct of a suspect would have been, to keep quiet till the day breaks and then go about indulging in the daily chores routinely as if she is not aware of the death of the deceased and would have feigned ignorance of the incident totally. On the contrary, it is P.Ws.1 to 3, who spoke that it is the accused, who woke them up at 11.30 in the night and informed them about the condition of the body of the deceased.

We are, therefore, of the opinion that the presence of the accused in the room, in which the deceased was found, though was very natural and is liable to be expected from out of a young married woman, but, yet, the said circumstance alone does not lead to the conclusion that it is the accused who has committed the offence. We feel that atleast two persons are needed to quickly and quietly strangle another. Strangulation is the result of compression of the neck by an acute force, otherwise than by hanging. Ligature strangulation, as spoken to by P.W.12 Doctor, is a violent form of death resulting from constricting the neck by means of a ligature or any other means without suspending the body. However, the strong suspicion might be, it is the settled principle of law, it is no substitute for proof. The evidence marshaled before the Sessions Court by the prosecution is on very weak footing. So was the motive attributed to the accused. LW.12, with whom the accused has some love affair, as per the prosecution, was not examined. Then, where is the guarantee that he would still welcome the accused, if she had done away with her husband. More importantly Ex.P.9, the scene of offence panchanama prepared by the C.I of Police, P.W.11, which also bears the signature of P.W.9, discloses that excepting the main door, there are no other doors to the house for any other 3rd party to gain access. This apart, the room in which the deceased and the accused went to sleep was hardly away from the room where P.Ws.1 to 3 are found sleeping. The scene of offence panchanama clearly discloses that the house of P.W.1 is a very small one but not a big one, for any unnatural thing or sound to have escaped the notice of the other inmates even during the night time.

We are of the opinion that the prosecution has not brought home the charge satisfactorily and beyond doubt. There is any amount of room to doubt the participation of the sole accused in the commission of the offence. It is not possible that the accused alone could have accomplished the offence and for the sheer failure of the prosecution to explore the possibility of involvement of the some other 3rd party along with the accused, we feel that the benefit of doubt must necessarily get extended to the accused. Hence, we set aside the conviction handed down by VI Additional District and Sessions Judge (Fast Track Court), Nizamabad at Kamareddy in S.C.No.76 of 2009.

Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 28.05.2010, in Sessions Case No.76 of 2009 on the file of the VI Additional District & Sessions Judge, (Fast Track Court), Nizamabad at Kamareddy for the offences punishable under Sections 302 and 201 I.P.C respectively shall stand set aside. The accused shall be set at liberty forthwith and the fine amount if any paid by her shall be refunded to her. Therefore, the accused shall be released forthwith, if she is not required in any other case.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

12.08.2015

Ksp

Note: Mark L.R.Copy.

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CRIMINAL APPEAL NO.753 OF 2010

Between:

Smt.Sravanthi @ Kalyani

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And

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High Court, Hyderabad.

... Respondents.

DATE OF JUDGMENT PRONOUNCED:12.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

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| 1. Whether Reporters of Local newspapers | No |
| may be allowed to see the Judgments? | |
| 2. Whether the copies of judgment may be marked to Law YES
Reporters/Journals | |
| | |
| 3. Whether Their Ladyship/Lordship wish to see the fair YES
copy of the Judgment? | |