

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(22.03.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.882 of 2010

Between:

Salluri Mallesh

..... APPELLANT/A1

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Sri A.CHANDRASEKHAR**

Counsel for the Respondent : **PUBLIC PROSECUTOR**

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.882 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

Accused No.1 in Sessions Case No.446 of 2009, on the file of the learned Sessions Judge, Adilabad filed this appeal against the judgment, dated 16.06.2010, whereby the learned Sessions Judge has convicted him for the offences punishable under Sections 302, 498-A and 201 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.2,000/- (Rupees two thousand only), in default to suffer simple imprisonment for three months for the offence under Section 302 IPC; to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- (Rupees five hundred only), in default to suffer simple imprisonment for two months for the offence under Section 498-A IPC; and to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- (Rupees five hundred only), in default to suffer simple imprisonment for three months for the offence under Section 201 IPC.

2. The case of the prosecution in brief is that the deceased Salluri Kavitha was the wife of the appellant/A1 and their marriage took place on 25.05.2001, but they were not blessed with any children. A2 & A3 are parents of A1. A1 to A3 started ill-treatment by harassing the deceased mentally and physically as she did not beget children. A2 and A3 instigated A1 to leave the deceased so that he can marry another girl. A1 wanted to get rid of the deceased and planned to kill her. In the said process, on 11.06.2008 at midnight, A1 pressed the neck of the deceased forcibly with Guyyi (a rubber wearing to ankles while climbing palm trees) and killed her, and later in order to create a scene that the deceased herself committed suicide by hanging, A1 tied his lungi around the neck of the dead body of the deceased and hanged to the rafter and made a hue and cry. On hearing the same, the neighbours came and then A1 cut the hanged lungi with knife and laid the dead body of the deceased on cot. On hearing the information PWs 1 and 2, the parents of the deceased came and on 12.06.2008 at 09.30 a.m. PW 1 lodged a complaint before the Police, Utnoor P.S.stating that he suspects that A1 to A3 killed his daughter and the same was registered as Cr.No.92/2008 under Sections

306, 498-A r/w.34 IPC. During course of investigation, the Investigating Officer examined the prosecution witnesses and recorded their statements, held inquest over the dead body of the deceased in the presence of inquestdars, sent the dead body for post mortem examination, and the Doctor opined that the death of the deceased was asphyxial death due to throttling.

3. On 20.06.2008 at 5 p.m the appellant/A1 surrendered himself before the Police, Utnoor PS and made extra judicial confession stating that he killed his wife in the midnight of 11.06.2008, that on the next day morning i.e. on 12.06.2008 the relatives and neighbours gathered, grew wild against him, beat him with sticks and he sustained injuries and due to fear he escaped from the scene. On the strength of the confessional statement of A1, the section of law i.e., Sections 306, 498-A r/w.34 IPC has been altered to under Sections 302, 498-A, 201 r/w.109 IPC. After completion of the investigation, the Inspector of Police, Utnoor filed the charge sheet.

4. The plea of the accused is one of denial.

5. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 21 and marked Exs.P1 to P17 and M.Os.1 to 5. On behalf of defence, no oral or documentary evidence was adduced. Based on the oral and documentary evidence, the learned Sessions Judge acquitted A2 & A3 observing that they were found not guilty of the charges, and convicted the appellant/A1 and sentenced him for the offences under Sections 302, 498-A and 201 IPC, as stated supra.

6. Learned Counsel appearing for the appellant submits that except for the extrajudicial confession purported to have been made by the appellant/A.1, absolutely there is no evidence on record to show that it is a homicidal death having been caused by the appellant. Learned Counsel submits that on the basis of the complaint made by the father of the deceased, the police have initially registered a case under Sections 306 and 498-A of IPC., but, subsequently, in view of the alleged extrajudicial confession, the charge sheet was ultimately laid alleging the

offences punishable under Sections 302, 498-A and 201 read with Section 109 IPC. Learned Counsel submits that the trial Court erred in holding that the appellant/A.1 is guilty of causing the homicidal death of his wife even though both the panch witnesses, in whose presence A.1 is alleged to have made confession, turned hostile and denied that A.1 made any such confession before them. Learned Counsel further submits that the consistent stand of the appellant through out had been that his wife/the deceased, committed suicide by hanging herself for which he is not responsible and therefore the conviction of the appellant cannot be sustained.

7. Learned Public Prosecutor, on the other hand, submits that even though there is no sufficient evidence to hold that it is the appellant who has killed the deceased but the cumulative effect of the oral and documentary evidence on record and the surrounding facts and circumstances in which the deceased admittedly died clearly shows that it is the appellant/husband who is responsible for the death of his wife and therefore the conviction cannot be said to be erroneous. Learned Public Prosecutor submits that the Court below has properly appreciated the evidence on record which does not warrant any interference.

8. The point for consideration is whether the prosecution proved its case beyond reasonable doubt so as to sustain the conviction and sentence recorded against the appellant/A.1, or whether the same needs to be set aside, modified or varied?

9. The appellant is A.1 and his parents were A.2 and A.3 in the Sessions Case. They were charged with offences punishable under Sections 302, 498-A and 201 read with 109 IPC. The trial Court acquitted A.2 and A.3 of all the charges. The appellant was found guilty of having caused the death of his wife on the intervening night of 11/12.06.2008 at Lakkavaram village of Utnoor Mandal, Adilabad District. It is a fact that the deceased and appellant were married on 25.05.2001 and they had no children. It is the specific case of the appellant that on the fateful night himself and his wife were in the bed room and at about 01.00 a.m., in the

midnight, the deceased/wife was found hanging with the help of the lungi and immediately the appellant raised cries, cut the lungi, brought down the deceased and immediately telephoned to PW 1, the father of the deceased and the neighbours came and it was found that the deceased died by then.

10. The case of the prosecution is that having been married for more than seven years, the couple were not blessed with children and that that was the main cause for the death of the deceased. The appellant and his parents were taunting and making comments that the deceased was a barren lady who cannot conceive and therefore it was better that the appellant got married to another woman for begetting children.

11. PW.1 was the father of the deceased and the *de facto* complainant. He spoke about the fact that the appellant used to harass the deceased on the ground that she was not begetting children. He also admitted that in the night of the incident at about 01.00 a.m., he received telephone call from the accused informing him about the death of his daughter. PW.1 expressed suspicion that the appellant and others were responsible for the death of his daughter. It is admitted by PW.1 that while the appellant and the deceased were living in a rented house, his parents/non-appellants/A.2 and A.3 were living in their own house separately. He denied the suggestion that the deceased committed suicide due to psychological imbalance. Similar is the evidence of PW.2 who was the mother of the deceased and also PW.3 – the sister of the deceased.

12. PW.6 is the daughter of PW.3. At the time of the incident, she was aged about 16 years and by the time she was giving her evidence in March, 2010, she was pursuing her II-Year Graduate course at Nirmal. She deposed that she used to go over to the house of her maternal aunt-the deceased, during summer vacation and stay there. She spoke about the conduct of the appellant when she used to stay with them. According to PW 6, even in the month of May, 2008, she went to the house of the deceased and appellant and in her presence, the appellant and his

parents abused the deceased as a barren lady.

13. From the evidence of the above relations of the deceased, what is manifest is that the deceased died an unnatural death within the four walls of her matrimonial home when she was in the company of her husband/the appellant. What transpired on the fateful night is not known but the evidence of the prosecution witnesses shows that the appellant and his parents used to harass the deceased on the ground that she was not begetting children. Except that there are no allegations against the appellant or his parents.

14. As already stated, the factum and the place of death were not denied. PW.4 is a neighbour who rushed to the house of the appellant and the deceased and found the deceased hanging to the wooden beam with lungi, that the appellant cut the lungi into two pieces and brought down the deceased and laid her on the cot and that at that time the deceased died. Similar is the evidence of PW.5 who also went to the house of the appellant and the deceased immediately and found the deceased dead.

15. PW.21 is the Doctor who conducted the autopsy and Ex.P.11 is the post-mortem report. As per his evidence, the cause of death of the deceased is said to be throttling. The Medical Officer has found the following injuries:-

“Ligature mark:- It is present mostly on left side of neck, extends from below the left ear lobnee to middle of right side of neck (2 cm below middle of right mandible).

It lies above the thyroid cartilage and measures 20 cm in length and 2 cm width.

“Ante-mortem” in nature.

Underlying structures of neck are congested.

Face is congested and blushed.

Lungs: Congested and haemorrhages found.

Contusion 3 x 2 cm found on nose.

Laceration 2 x 2 x ½ on 4th right toe.

“All are ante-mortem in nature.”

During his cross-examination, PW.21 admitted that the death is also possible due to partial hanging. In the re-examination, it was elicited from

him that throttling is a part of strangulation.

16. In view of the above, it cannot be conclusively said that the cause of death of the deceased was due to strangulation or throttling. Absolutely no injuries whatsoever were noticed on the face or other parts of the body except for a minor injury on the finger of a leg. If a person is forcibly throttled or strangled, there are bound to be injuries, more particularly, in and around the neck, face and elbows of the hands. No such injuries were found by the Medical Officer on the body of the deceased. Furthermore, it is very difficult to believe the version of the prosecution that single handedly the appellant/husband after killing the deceased/wife hanged her dead body with the help of his lungi to the wooden beam which is at the height of about 7 feet as recorded in the scene of offence panchanama. However, the dead body was found hanging and the same was removed by the appellant and two of the neighbours, who were examined as PWs.4 and 5.

17. For sustaining the charge of culpable homicide punishable under Section 302 IPC., what is required to be established by the prosecution is that it is the person in the dock who is responsible for causing the death of the deceased. In the instant case, except for the alleged extrajudicial confession said to have been made by the appellant/A.1 in the presence of PWs.7 and 8, absolutely there is nothing on record to show that the appellant killed the deceased. According to the prosecution, the appellant confessed before these two witnesses that he killed the deceased by pressing her neck with the rope which will be used to climb the toddy trees. Both the witnesses denied that the appellant made any such confession. Therefore, as rightly submitted by the learned Counsel appearing for the appellant, it cannot be said that the prosecution has proved beyond reasonable doubt that it is the appellant who has killed the deceased by pressing her neck with the help of a rope.

18. In view of the above, we find it difficult to hold that the prosecution has proved beyond reasonable doubt that it is the appellant who killed the deceased and thereafter hanged the dead body to make

everyone believe that the deceased committed suicide.

19. As noted above, the crime itself was originally registered under Sections 306 and 498-A of IPC., but, however, no charge was framed against the appellant for the offence punishable under Section 306 IPC. Admittedly, it is the case of the appellant that his wife committed suicide by hanging herself. The incident took place in the bed room which was occupied by none other than the appellant and deceased themselves. It is not the case of the appellant that he was not in the company of the deceased on the night of incident. The incident took place in the dead end of the night i.e., at about 01.00 a.m. Therefore, he is the only person who knows the real cause of death of the deceased even if it be suicide. Except for saying that the deceased committed suicide due to psychological imbalance, nothing further is placed on record on behalf of the appellant even to probablize the said contention and that he is in no way responsible for the death of his wife. On the other hand, there is consistent evidence of PWs.1, 2, 3 and 6 that the appellant and his parents used to make certain comments against the deceased saying that she is a barren lady who cannot begot children. The most treasured wealth of a woman is motherhood. If she is not able to conceive for any medical reasons, she needs to be attended carefully and she needs all the moral support particularly from the husband. Instead of that, if the husband and his parents abuse or harass the deceased for not begetting children that will naturally lead a woman to think that she has no option except to end her life. The deceased had been driven by the appellant to resort to the extreme step of committing suicide for her inability to procreate children. Therefore, it can safely be held that the appellant is the person who has subjected the deceased to harassment and cruel treatment, which compelled the deceased to commit suicide.

20. The question that needs to be considered now is whether the appellant while holding him not guilty of the offence under Section 302 IPC., can be said to have committed an offence punishable under Section 306 IPC., for which he is not specifically charged. In this connection, a

reference can be made to a Judgment delivered by three Judge Bench of the Supreme Court reported in **DALBIR SINGH v. STATE OF U.P.**^[1] wherein it is specifically held as under:-

“Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with **Irregular Proceedings** and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In *Lakhjit Singh* (1994 SCC (Cri) 235) though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In

Sangaraboina Sreenu (1997 SCC (Cri) 690) the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside.

This question was again examined by a three Judge Bench in *Gurbachan Singh v. State of Punjab* (1957 CriLJ 1009) in which it was held as under:

"In judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu* (supra) was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

The above decision was followed subsequently by the Supreme Court in a decision reported in **VIRENDRA KUMAR v. STATE OF U.P.**^[2] holding that when the appellant is charged with an offence under Section 302 IPC., and even in the absence of there being a charge under Section 306 IPC., the appellant can be convicted under Section 306 IPC.

21. Before convicting an accused of the offence for which he is not charged, what is required to be ensured by the Court is that there will be no failure of justice, that the accused was aware of the basic ingredients

of the offence for which he is proposed to be convicted, that the main facts sought to be established against him were explained to him clearly and that he got a fair chance to defend himself.

22. In the instant case, right from the stage of lodging of the complaint, the case of the *de facto* complainant and the prosecution has been that the accused used to harass the deceased wife on the ground of her inability to conceive and therefore the deceased was found lying dead in the bed room of her matrimonial home where no one other than the appellant/husband was living. Therefore it cannot be said that there will be any failure or miscarriage of justice if the appellant is found guilty of having abetted the suicide of his wife even though the prosecution failed to prove beyond reasonable doubt that he has firstly killed the deceased/wife and thereafter hanged the dead body to appear as if it was a suicide.

23. It may also be placed on record that the appellant/A.1 is already charged with the offence punishable under Section 498-A of IPC., and he has been found guilty thereof. In order to constitute an offence under Section 498-A of IPC., what is required to be alleged and proved is that the husband of a woman has subjected his wife to cruelty which has been defined as *any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman*. To convict a person for offence under Section 306 IPC, the prosecution must prove that the accused has abetted the commission of suicide by any person for whatever reason it may be. In the instant case, since the appellant has already been charged with the offence under Section 498-A IPC., and has been found guilty thereof, he cannot be heard-saying that there will be any prejudice to him if he is convicted for a charge under Section 306 IPC., for which he has not been specifically charged, more so when he is liable for lesser punishment.

24. In view of the above, we have no hesitation in holding that in the peculiar facts and circumstances of the case in hand and the evidence

that is produced by the prosecution, the appellant though not it can be held committed the offence punishable under Section 302 IPC., he can be certainly said to have committed the offence punishable under Section 306 IPC. He is therefore liable to be convicted therefor even in the absence of there being any specific charge since the necessary ingredients of subjecting a woman to harassment resulting in her committing suicide have been established. Accordingly, the conviction of the appellant for the offence under Section 302 IPC is converted to the one under Section 306 IPC.

25. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/A.1 for the offence punishable under Section 302 IPC., are modified to that of under Section 306 IPC., and he is sentenced to undergo rigorous imprisonment for 7 (seven) years. The fine imposed by the trial Court is sustained. The conviction and the sentences recorded against the appellant/A.1 by the trial Court for the offences under Sections 498-A and 201 IPC are confirmed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

Date: 22.03.2016
Dsr/smr

[\[1\]](#) (2004) 5 SCC 334

[\[2\]](#) 2007 AIR SCW 854