

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

Criminal Appeal No.1552 of 2010

Dated: 21st December, 2016

Between:

Mekala Sessaiah @ Meka Seshu @ Seshu Kumar (A-1)

..Appellant/Accused No.1

And

The State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Smt. C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



THE HON' BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
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JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in S.C.No.325 of 2009, on the file of the learned V Additional District and Sessions Judge (FTC), Khammam at Kothagudem filed this appeal against the judgment dated 23.11.2010, whereby he was convicted for the offences under Sections 498-A and 302 IPC and sentenced to undergo Rigorous Imprisonment for a period of two years and also to pay a fine of Rs.1,000/- and in default to suffer Simple Imprisonment for four months for the offence punishable under Section 498-A IPC and to undergo imprisonment for life and to pay a fine of Rs.2,000/- and in default to suffer Simple Imprisonment for one year for the offence punishable under Section 302 IPC. Both sentences were directed to run concurrently. However, the lower Court has acquitted accused Nos.3 to 7 of the charge under Section 498-A IPC, accused No.2 of the charge under Section 302 read with 109 IPC and accused Nos.1 and 5 of the charge under Section 201 IPC.

2. The prosecution case, in brief, is as follows:-

The appellant/ accused No.1 is the husband of one Meka Mani (hereinafter referred to as 'the deceased'). Accused No.2 is the concubine of the appellant. Accused Nos.3 and 4 are the parents-in-law, accused No.5 is the brother-in-law and accused Nos.6 and 7 are the sisters-in-law of the deceased. At the time of marriage of the

deceased with the appellant, parents of the deceased gave cash of Rs.50,000/- and gold ornaments as dowry. After the marriage, the deceased and the appellant lead a happy life for two years. Later, the appellant started harassing the deceased demanding an additional dowry of Rs.50,000/- and used to beat her frequently. The deceased informed the same to her mother-PW.1, who in turn brought the same to the notice of caste elders i.e., PWs.3, 9, 10 and 12. In this connection, a panchayat was held by the elders and the appellant was advised to look after the deceased well. But there was no change in the attitude of the appellant and he continued harassing the deceased for not bringing additional dowry and also for not begetting children and, for the latter reason, threatening that he would marry another woman. This was also referred to elders who admonished the appellant. Meanwhile, the deceased joined politics and became leader of Women's Wing, Telugu Desam Party of Mulakalapalli village and the appellant also got job at Velugu Organization. Thereafter, the appellant developed extramarital relationship with accused No.2 and insisted on the deceased to give divorce and harassed her stating that he would bring accused No.2 to the house. This was also brought to the notice of elders, who advised the appellant to change his attitude.

On 20.02.2008 at 9.00 p.m., PW.2, the sister of the deceased, received a telephone call from the appellant that he was going to kill the deceased on that night and asked her to take the dead body on the next day. On the same day, at around 9.40 or 9.45 pm., on receiving a phone call from the deceased that the appellant was

beating her, PW.1 consoled her saying that as it was late night, she would visit her next morning. On the same night, PW.5 also received a call from the deceased that quarrels were taking place between her and the appellant and asked him to come to her. Then, on the next day morning at 7.00 a.m., one Chanti telephoned and informed the parents of the deceased that the latter died. Immediately PW.1 along with others rushed to the scene and when enquired, some people present over there informed them that the deceased was killed, whereas some other people informed that she committed suicide.

On receiving information, PWs.9, 10 and 12 also rushed to the house of the appellant and when enquired, the appellant informed them that on the previous night, a quarrel took place between him and the deceased, due to which the latter committed suicide.

On 21.02.2008 at 12.00 noon, on receiving Ex.P1 - report from PW.1, PW.21, the then Sub-Inspector of Police, Mulkalapalli police station, registered a case in Crime No.8 of 2008 and issued FIR, which is marked as Ex.P9. Further investigation was taken up by PW.22, the then Circle Inspector of Police, Palvanha. He visited the scene of offence, held inquest over the dead body of the deceased and prepared Ex.P10 inquest panchanama and Ex.P11 Crime Details Form in the presence of PWs.13 and 14. Thereafter, he sent the dead body for post-mortem examination. On the same day, on receiving requisition, PW.16, the Civil Assistant Surgeon at Government Hospital, Palavancha, held autopsy over the dead body of the

deceased and opined that the cause of death was due to strangulation. Ex.P8 is the post-mortem report.

On 24.02.2008, PW.22 apprehended the appellant in the presence of PW.15 and sent him to judicial remand. After collecting the relevant documents and on completion of investigation, LW.23, the then Circle Inspector of Police, Kothagudem filed the charge sheet.

3. In support of its case, the prosecution examined PWs.1 to 22 and marked Exs.P1 to P13. On behalf of the defence, no evidence was adduced.

4. On appreciation of oral and documentary evidence, the lower Court has acquitted accused No.2 of charge under Section 302 read with Section 109 IPC, accused Nos.3 to 7 of charge under Section 498-A IPC and accused Nos.1 and 5 of charge under Section 201 IPC. However, accused No.1 (appellant) was convicted for the offence punishable under Sections 498-A and 302 IPC and sentenced him to undergo imprisonment for life for the offence punishable under Section 302 IPC and Rigorous Imprisonment for a period of two years for the offence punishable under Section 498-A IPC and to pay fine as noted hereinbefore.

5. At the hearing, Smt. C.Vasundhara Reddy, learned counsel for the appellant, argued that the prosecution failed to prove the main charge, namely, that the appellant has caused the death of his wife by pressing her throat to the cot frame. That as per the evidence of PW.16, the doctor, the death has occurred due to

strangulation. That as per the evidence of PWs.9, 10, 12 and 15, quarrel between the appellant and the deceased preceded the incident of death, which probabilises that the death is suicidal and not homicidal. That the medical evidence is ambiguous as PW.16 did not rule out the possibility of suicide and that, therefore, where two views are possible for the cause of death, the one which is favourable to the accused must be accepted by the Court. In support of this plea, the learned counsel placed reliance on the judgment of the Supreme Court in *Anand Poojary v. State of Karnataka*¹ and the judgment of this Court in *Rajulapadu Rambabu v. State of Andhra Pradesh*². The learned counsel has alternatively submitted that even if the appellant has caused the death of the deceased, he might have committed the act in grave and sudden provocation following a quarrel between himself and the deceased and that, therefore, at best, the act of the appellant may fall under Section 304 Part-I of IPC.

6. Mr. C.Prathap Reddy, learned Public Prosecutor for the State of Telangana, submitted that though the case is based on circumstantial evidence, the prosecution was able to prove the guilt of the appellant beyond all reasonable doubt and that the lower Court has assigned sound and cogent reasons to convict the appellant for the offences under Sections 498-A and 302 IPC.

¹ (2015) 1 SCC 235

² 2011 (1) ALD (Crl.) 527 (AP)

7. We have carefully considered the submissions of the learned counsel for the appellant and the learned Public Prosecutor.

8. The prosecution case is based on circumstantial evidence where motive plays vital role. In Ex.P1 –police report given by PW.1, the mother of the deceased, it is alleged that the appellant was harassing the deceased for not bringing Rs.50,000/- for purchasing agricultural land and also the deceased not begetting children. It is further alleged that for the latter reason, the appellant was intending to marry another woman who is arrayed as accused No.2, with whom the appellant has developed illicit relationship five years prior to the incident. The report specifically alleged that PW.2, the younger sister of the deceased, received a phone call from mobile No.9948242149 at 9.00 p.m., on 20.02.2008, the night on which the deceased was done to death, during which the appellant has announced that he was going to kill the deceased and asked PW.2 to come on the following morning and take away the dead body. PW.1 gave a graphic description of how the appellant was harassing the deceased for the aforementioned reasons. She has also referred to panchayats held at her instance by PWs.3, 9, 10 and 12.

PW.9, who is also a resident of the locality in which PW.1 lives, deposed that after two years of marriage, disputes arose between the appellant and the deceased, and himself, PW.3 and PW.10 held panchayats. PW.10 also deposed that two years after the marriage, disputes arose between the appellant and the deceased and that PW.1 informed him that the appellant developed illicit relationship

with one woman working in Velugu Organisation and that he was also demanding additional dowry of Rs.50,000/- . He has further stated that at the instance of PW.1, himself and other elders such as PW.3, PW.9 and PW.12 went to Mulakalapalli village, where the appellant was living, and held panchayats. He has further deposed that during the panchayats, the panchayatdars told the appellant that he was harassing the deceased on the ground that she was not able to give birth to children and advised the appellant to behave well and that thereafter, following quarrels between the appellant and the deceased, the latter has returned to her parents' house and that subsequently another panchayat was held at the house of PW.12 and during that panchayat also, the elders tried to pacify the couple and they have sent the deceased back to the house of the appellant. PW.12 has fully corroborated the testimony of PWs.9 and 10. The evidence of PW.3 is also on similar lines. Though several suggestions were put to these witnesses suggesting that they are deposing falsehood, nothing material could be elicited from their evidence to discredit their version. This evidence, in our opinion, is sufficient to hold that the appellant was constantly harassing the deceased both for not bringing additional dowry and also for not being able to beget children. These two reasons in our opinion constitute sufficient grounds for the appellant to develop aversion against the deceased.

9. As regards the submission of the learned counsel for the appellant that the prosecution failed to prove that the death is homicidal and that the appellant has caused the death of the

deceased, we have carefully scanned the evidence of the relevant prosecution witnesses. It is not in dispute that the death has taken place in the house of the appellant. As noted hereinabove, in Ex.P1, PW.1 has categorically mentioned that on the night of occurrence, at about 9.00 p.m., PW.2 has received a phone call from the appellant and she was told by the latter that he was going to do away with the life of the deceased. This earliest version was further spoken to both by PW.1 and also PW.2. No doubt the prosecution failed to place before the Court the call list. In the absence of such evidence, it may not be possible for this Court to arrive at a specific finding as to whether the appellant has really made a phone call to PW.2 and announced that he was going to kill the deceased. However, the conduct of the appellant after the death of the deceased raises a serious suspicion about his lack of bona fides. As per Ex.P8 – post mortem report, the death might have taken place about 16 to 20 hours prior to the post mortem examination, which commenced at 4.00 p.m., on 21.02.2008. As observed earlier, the death has occurred at the house of the appellant. The appellant has not come out with any definite version as to what he was doing when the deceased was allegedly committing suicide. The scene of offence sketch enclosed to Ex.P10 – panchanama shows that the house comprised only two rooms apart from a toilet and a staircase veranda. The appellant and the deceased were supposed to be sleeping in one of the two rooms where the cot was shown. However, the body was found on a cot in the veranda by the side of the bathroom. When it is the case of the defence that the deceased

has committed suicide by hanging, no explanation was forthcoming as to who brought the body down and made to lie on a cot in varanda. The appellant failed to bring out the events that followed after the body was found by him and other family members. Had it been a case of suicide by hanging, the appellant should have been the first person to inform everyone including the police about the incident. The appellant is tight-lipped on this aspect. Except that he was present althrough, no explanation whatsoever was forthcoming as to his role both prior to and after the incident till police and the parents of the deceased and other relatives arrived at the scene on the following morning. Added to this, the evidence of PW.16, the doctor, would show that the cause of the death is due to asphyxia due to strangulation. To a suggestion made to her in the cross-examination, this witness denied that the injuries found on the neck of the deceased could be possible to have been caused if a person commits suicide. However, she has admitted that if a person commits suicide by hanging to a silk saree, the neck of such person is pressed and the injuries mentioned in Ex.P8 could be possible to have been caused. This aspect has been handled by the lower Court with aplomb by giving the following sound reasoning:

“The law is well settled and there are catena of decisions from the Hon’ble Apex Court as well as different high courts that the court can refuse to place any reliance on the opinion of the expert which is unsupported by any reason at the same time where the direct evidence was cogent, reliable and unimpeachable the medical evidence cannot over ride. In the present

case on hand also in view of the nature of injuries found on the body of the deceased as seen from Ex.A8 (sic Ex.P8) Postmortem examination report and Ex.A6 photographs the injury of contusion of 1 x 1 inch below the chin is not possible to have been caused if a person hanged herself with a saree. So also fracture of hyoid bone is mostly common in the suicide by hanging. When the injuries stated by PW.16 found on the body of the deceased below the chin and had they were caused by hanging herself certainly there must be an injury in between external injury No.2 down to the neck on the hyoid bone and right side of the neck. The contusions are not possible to have been caused when they were read with external injury No.3, without causing any injury towards right side of the neck and on the hyoid bone. So unless (sic the) PW.1 (sic deceased) was pressed to some hard object those injuries were not possible by mere hanging. The very nature of the external injuries were caused and found (on) the body of the deceased shows by mere hanging by the deceased injury No.1 to 3 could not have been possible. As seen from the postmortem report the body of the deceased appears fresh. There is no mention in the report regarding the bluishness developed. Thus postmortem lividity was not observed on the lower part of the body is quite manifest. If the deceased (sic was) hanged herself and committed suicide the postmortem lividity would have been observed on the lower part of the body due to accumulation of blood in committing suicide by hanging with rope or saree, marks should have been found around the neck with rupture at the same time tracheal injury particularly fracture of tracheal bones would be common in a case of hanging. So also fracture or injury of hyoid bone also common in

case of suicide by hanging. The tongue would be protruded in case of hanging. But all the above nature of injuries are not visible on the body of the deceased and the same is clear from Ex.A8 (sic Ex.P8) postmortem examination report. So the injuries found on the neck of the deceased are not correlated to conclude that the deceased Mani hanged herself to commit suicide. When the injuries found on the neck of the deceased closely examined they are suggesting (sic conclude) that the death was caused by pressing her throat to the frame of the cot as alleged by the prosecution. So for the reasons stated above the defence taken that the deceased herself committed suicide is not acceptable.”

10. We are in complete agreement with the well articulated reasons furnished by the lower Court to reject the defence theory of suicide. The lower Court has also rightly cast the burden on the appellant to explain as to how his wife has died as the death has taken place in his house and the deceased was living in his company. The judgments in Anand Poojary (1 supra) and Rajulapadu Rambabu (2 supra) relied on by the learned counsel for the appellant do not help the appellant for the reason that the facts in the respective cases dealt with by the Apex Court and this Court do not bear any similarity to the facts of this case. While there is no quarrel on the proposition that when there is ambiguity in the medical evidence on the cause of the death, benefit of doubt must go to the accused, the facts and circumstances of the present case clearly point to the culpability of the appellant. Though the doctor, who initially ruled out the possibility of the injuries found on the body of the deceased

being caused in case of suicidal death by hanging to a saree, however, wilted a little in her cross examination by accepting suggestion that such injuries may be possible in case of suicide. But, the evidence of doctor is only an opinion evidence, which is not conclusive and binding on the Court. In our opinion, the nature of the injuries found on the body of the deceased is such that there was absolutely no possibility of they being caused in case of suicidal death. Added to this, the conduct of the appellant, as discussed above, and the circumstances leading to the death of the deceased clearly prove that it is only the appellant who caused the death of the deceased. It is a case of homicidal death and the appellant alone is responsible for the same.

11. Now, coming to the alternative submission of the learned counsel for the appellant, the evidence on record clearly shows without any cavil of doubt that a quarrel has preceded the incident, during which, the appellant has beaten the deceased evidently for informing her sister about the harassment being meted out by the appellant. Even as per Ex.P7 – confessional panchanama, the appellant has given a graphic description as to how he has done away with the life of the deceased. He has categorically stated that as the deceased refused to sleep with him by stating that he has accused No.2 for his company and also as she spoke to her family members on phone, he has beaten the deceased and pressed her neck against the cot, resulting in the instantaneous death of the deceased. In our opinion, the appellant may not have had premeditated intention to

cause the death of the deceased, but he appeared to have killed the deceased in grave and sudden provocation following the serious quarrel between himself and the deceased. Thus, in our opinion, the act of the appellant will attract the provisions of Section 304 Part-I of IPC.

12. In the result, the conviction recorded by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, vide judgment dated 23.11.2010 in Sessions Case No.325 of 2009, against the appellant-accused No.1 for the offence punishable under Section 302 IPC is converted into one under Section 304 Part-I IPC and the sentence is modified to ten (10) years Rigorous Imprisonment instead of life imprisonment, while sustaining the fine imposed on him and also the conviction and sentence imposed on him for the offence punishable under Section 498-A IPC. Both sentences shall run concurrently.

13. The Criminal Appeal is partly allowed to the extent indicated above.

C. V. NAGARJUNA REDDY, J

M. S. K. JAISWAL, J

21st December, 2016
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