

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice M.S.K.Jaiswal

Criminal Appeal No.1519 of 2010

Date: 25.10.2016

Between:

Shaik Syed Mastan Vali @ Mastan Vali

.. Appellant

and

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

.. Respondent

Counsel for the Appellant : Smt.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:



Judgment : (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Criminal Appeal is filed against Judgment, dated 21.10.2010, in Sessions Case No.139 of 2010 on the file of the Sessions Judge, Mahila Court, Vijayawada, whereunder the sole accused was convicted for the offence under Section 302 IPC and sentenced to Imprisonment for Life.

The case of the prosecution in brief is as follows:

The appellant/accused is a resident of Vijayawada. He was a videographer. He married one Noorjahan (hereinafter referred as 'the deceased'), who is the daughter of PW.2 and sister of PW.1, in the year 2000. They were blessed with a daughter and a son. The appellant was addicted to alcohol and he used to beat the deceased in a drunken state. The deceased used to inform the same to her parents.

About 13 days prior to the death of the deceased, the deceased visited her parents' house and told them that the appellant and his parents were going to kill her and asked for protection. On that day, within half-an-hour, the appellant came and took her and the children along with him by assuring that he would be responsible if anything happens to her.

On 23-08-2004 in the morning, PW.5- father of the respondent came to the house of PWs.1 & 2 and asked them to accompany him as the deceased was not feeling well. PWs.1 and 2 went to the house of the appellant and found the dead body of the deceased lying on a cot in their house. The neck of the deceased was found pressed. A black mark was also found on her neck. By that time, the appellant was not present there and the mother of the appellant informed them that the appellant murdered the deceased and went away. PW.1 went to the Police Station and lodged Ex.P.1 report.

PW.11- Sub Inspector of Police, L&O, Suryaraopet, received Ex.P.1- report from PW.1 on 23-08-2004 at 13-30 hours and registered the same as Crime No.230 of 2004 under Section 302 IPC and issued Ex.P.11- First Information Report.

PW.12- Circle Inspector of Police, Vijayawada, received FIR from PW.11 and issued requisition to PW.10- Deputy Mandal Revenue Officer, Vijayawada Urban, to conduct inquest. PW.12 visited the scene of offence and conducted panchanama in the presence of PW.6 and others. Ex.P.12 is the rough sketch of the scene of offence. Ex.P.4 is the scene observation report. During the time of scene observation, PW.12 recovered MOs.1 to 4.

PW.10 conducted inquest over the dead body of the deceased. Ex.P.5 is the inquest report. After inquest, PW.12 examined PWs.1 to 5 and others and recorded their statements.

PW.9- Assistant Professor, Department of Forensic Medicine, Siddartha Medical College, Vijayawada, conducted autopsy over the deadbody of the deceased and opined that the death was due to asphyxia as a result of pressure over neck and that the appearance of pressure abrasion marks was suggestive of hanging. Ex.P.9 is the Post Mortem Certificate.

PW.12 arrested the appellant on 25-08-2004 at Pandit Nehru Bus Station, Vijayawada, in the presence of PW.7 and others. The appellant confessed to the commission of offence before the mediators. Ex.P.6 is the confessional statement. Ex.P.7 is the mediators' report at the time of recording confession. The appellant was sent for judicial custody. After completion of investigation, charge sheet was filed by the successor of PW.12.

As the plea of the appellant is one of denial, he was tried for the offence of murder. During the trial, the Prosecution examined PWs.1 to 12 and marked Exs.P.1 to P.12 and MOs.1 to 4. No oral evidence was let in on behalf of the appellant.

However, the contradictions in Section 161 Cr.P.C. statements of PWs.2 and 4 have been marked as Exs.D.1 and D.2 respectively.

On appreciation of both oral and documentary evidence, the trial Court, while convicting the appellant for the offence under Section 302 IPC, sentenced him to suffer Imprisonment for life.

At the hearing, Smt.A.Gayathri Reddy, learned Counsel for the appellant, submitted that the appellant was wrongly convicted for the offence under Section 302 IPC and that the evidence on record is not sufficient to prove the guilt of the appellant. She has alternatively submitted that even if the appellant was found guilty of causing the death of the deceased, he ought to have been convicted either under Section 304 Part II IPC or atleast under Section 304 Part I IPC.

The learned Public Prosecutor for the State of Andhra Pradesh opposed the above submissions and contended that through the evidence of PWs.1, 2, 3, 5 (though turned hostile) and 9 and 12, the prosecution was able to drive home the guilt of the appellant beyond reasonable doubt and that therefore, he was rightly convicted for the offence under Section 302 IPC and sentenced to Life Imprisonment.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the evidence on record.

PWs.1 and 2 are the brother and mother of the deceased respectively, PW.3 is the tenant of the appellant, PW.5 is the father of the appellant, PW.9 is the Doctor, who conducted Post Mortem on the dead body of the deceased, and PW.12 is the Inspector of Police, who investigated the Crime and filed charge sheet. As rightly submitted by the learned Public Prosecutor, they are the crucial witnesses.

In his evidence, PW.1 referred to the harassment of the deceased meted out by the appellant over a period of time prior to the incident. He has deposed that the harassment started two or three months after the marriage of the appellant with the deceased and that the appellant used to beat the deceased in a drunken state. He further deposed that 13 days prior to the death of the deceased, she came to his house and told him that the appellant and his parents were going to kill her and asked him to protect her. Within half-an-hour thereafter, the appellant came to their house and assuring that he would look after the deceased and the children well, took them back to his house. He has further deposed that on the morning of 23-08-2004, PW.5- father

of the appellant came to his house and asked his mother to come to their house saying that the deceased was not feeling well; that he along with his mother went to the house of the appellant and found the dead body of the deceased lying on a cot in their house; that they found the neck of the deceased pressed; and that a black mark was also found. He has further deposed that at that time, the appellant was not present and that the mother of the appellant told that the latter has murdered the deceased and gone away. Later, PW.1 went to the Police Station and gave Ex.P.1- report.

In his cross-examination, PW.1 has admitted that he did not report to the Police about their taking the deceased to hospital earlier for treatment as it was a family dispute. He has also admitted that no Panchayat was held before the elders and that he has no telephone connection in his house. He has also admitted that he has not reported to the Police that the deceased telephoned him twice or thrice 10 days prior to her death. He has deposed that the appellant has started an STD shop, one or two months prior to the death of the deceased and that as the appellant was moving as a vagabond, the deceased was running the said shop. He has denied the suggestion that the appellant never murdered the deceased and that he was deposing falsely.

PW.2- mother of the deceased corroborated the evidence of PW.1 regarding the events that have transpired prior to the incident and the appellant taking the deceased along with him from her house by assuring that he will look after the deceased and her children well. She has also justified that on being informed by PW.5- father of the appellant, they went to the house of the appellant where they found the dead body of the deceased lying on a cot with injuries on one hand and one leg and her neck having swollen as the same was found pressed. She has further deposed that she did not find the appellant at the scene of offence and that the mother of the appellant informed them that the appellant murdered the deceased by pressing her neck with a wire. She further deposed that a wire was also found at the scene of offence. In her cross-examination, PW.2 has denied the material suggestions put to her. Nothing of significance could be elicited from her.

PW.3- tenant of the appellant and his family at the relevant time deposed that during the midnight on which the incident has taken place, the son of the deceased was crying at their door and that when she opened the door and went to the portion where the appellant and the deceased were living, she found the deceased lying down and the appellant bringing his father and mother from

the first floor. She further deposed that her husband brought an auto to take the deceased to the hospital and that one hour later, they were told that the deceased died.

In her cross-examination, PW.3 clearly stated that the appellant and the deceased were quarrelling but she did not know on what issues such quarrels were taking place. She has further deposed that when she asked the deceased as to why they were quarrelling, the latter has asked her not to interfere in their disputes. She has denied the suggestion that if quarrels take place in the portion where the appellant and the deceased were living, there is every possibility of the people in the portion occupied by the witness hearing the same. She has further deposed that when PWs.1 and 2 went to the scene of offence, the appellant was present at that time and that in the afternoon, he was taken by the Police.

PW.5- father of the appellant was treated as hostile. However, his deposition is relevant to prove the presence of the appellant at the time of occurrence. He has deposed that during the midnight of 22-08-2004 at about 2 a.m., the appellant came to his portion and knocked the door saying that the deceased was not speaking and that his son was crying; that when they went

out, they found the deceased lying on a bundle of clothes; that they have taken the deceased to Praja Vaidyasala in an auto; and that on the advise of the compounder, they have taken her to the Care Hospital, Vijayawada, where the doctors have declared her dead. He feigned ignorance as to how the deceased died. He has further deposed that he has informed the parents of the deceased about the death. He has denied the suggestion that the Police have examined him.

PW.6 is the attestor of Ex.P.4- Scene Observation Report. He deposed that based on the injuries found on the dead body of the deceased, the panchayatdars opined that she was killed by the appellant and his parents. He has denied the suggestion that PWs.1 and 2 are his relatives and that they are well acquainted with him.

PW.10- Special Deputy Tahsildar was a witness to the inquest following which Ex.P.5- Inquest report was prepared.

PW.9- Doctor, who conducted autopsy over the dead body of the deceased, found the following injuries:

“(1) Oblique pressure abrasion mark 11 c.m x 2 c.m present on right side of neck. The mark is brown in colour, hard, dry and parchment like putrefaction is prevented in that area.

The medical end is above the level of thyroid cartilage.

(2) Pressure abrasion mark 7 c.m x 2 c.m present on front and left side of neck about the level of thyroid cartilage. Cuticle peeled off.

The above injuries are antemortem in nature.”

He opined that the death of the deceased was due to asphyxia as a result of pressure over neck and that the appearance of pressure abrasion marks is suggestive of hanging. He has further deposed that he has issued Ex.P.9- Post Mortem Certificate. Significantly, the Doctor was not subjected to cross-examination by the defence.

The medical evidence as discussed above would clearly show that the death was homicidal and not suicidal because in case of death due to hanging there are bound to be ligature marks, which were not found on the body of the deceased and PW.9 opined that the death of the deceased was due to asphyxia, which is as a result of pressure over the neck.

From the evidence discussed above, there could be no doubt that frequent quarrels were taking place between the deceased and the appellant. The evidence of PWs.1 and 2 were amply corroborated by that of PW.3, who is an independent witness being the tenant of the appellant. Nothing was suggested to her that either she had any enmity with the family of the

appellant or that she was in any way connected with the family of the deceased or her parental family.

The incident has taken place in the ground floor portion of the house of the appellant, in which, the appellant along with the deceased and children was living, while his parents were living in the first floor portion. There is no doubt about the approximate time around which the incident has taken place. It was 2 a.m. PW.5, who is none other than the father of the appellant, not only spoke about the presence of the appellant around the time of the incident but also deposed that he came to know about the incident through the appellant as he woke him up during the midnight of the incident and informed that the deceased was not well. This evidence was amply corroborated by PW.3 herself. From this evidence, it is absolutely clear that the appellant was very much present when the incident has taken place.

Both in the suggestions given to some of the witnesses and also in his examination under Section 313 Cr.P.C., the appellant tried to paint the cause of death as suicide. Indeed, to one of the questions during his examination under Section 313 Cr.P.C., the appellant has even gone to the extent of pleading *alibi* by stating that he went to Hyderabad and that the deceased has informed

him on phone that she is going to commit suicide suspecting illicit intimacy between himself and another woman. Not even a suggestion to this effect has been put to any of the prosecution witnesses. Therefore, the alleged *alibi* set up by the appellant has remained a mere statement without being proved. The appellant being the husband of the deceased, the occurrence having taken place during night at his own house in his presence, he is in exclusive knowledge of the occurrence. Hence, Section 106 of the Indian Evidence Act, 1872, which places the burden of proving a fact especially within his knowledge, is squarely attracted. The appellant failed to discharge this burden lying on him.

In the light of these facts, we have no hesitation to hold that it was not a case of suicide as pleaded by the appellant and that it is only the appellant, who caused the death of his wife.

While elaborating the alternative submission advanced by her, the learned Counsel for the appellant submitted that the scene of offence shows some broken glass pieces suggesting that a scuffle must have ensued leading to grave and sudden provocation of the appellant to cause death. We are afraid we cannot accept this submission. The broken glass pieces by itself would not suggest a quarrel. In fact, on the contrary, it may

suggest stiff resistance by the deceased when the appellant tried to squeeze her neck through MO.2. If at all the appellant has done away with the life of his wife under grave and sudden provocation, such suggestions would have been forthcoming either in the cross-examination of the prosecution witnesses or at least the appellant should have taken such a stand in his examination under Section 313 Cr.P.C. As noted above, he has taken the defence that it was a case of suicide and also pleaded *alibi*. In our opinion, the appellant had the intention of doing away with the life of his wife as he used to frequently quarrel with and harass her.

In the light of the above discussion, we have no reason to interfere with the judgment of the lower Court and the Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 25th October, 2016
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