

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
MONDAY THE TWENTY FIFRST DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(21.03.2016)

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

CRIMINAL APPEAL No.836 of 2010
&
CRIMINAL REVISION CASE No.806 of 2011

Crl.A.No.836 of 2010

-
Between:

Yerramsetti Satish

..... Appellant/Accused No.1

AND

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

.....Respondent

Counsel for the Appellant

: **Sri T.NIRANJAN REDDY**
for **Sri T.NAGARJUNA REDDY**

Counsel for the Respondent

: **PUBLIC PROSECUTOR (AP)**

-
Crl.RC.No.806 of 2011

-
Between:

T.Venkateswarlu

..... Revision Petitioner/*De facto* complainant(PW-1)

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad and 2 others

.....Respondents

Counsel for the Appellant

: **Smt.A.VARALAKSHMI**

Counsel for the Respondent No.1 : **PUBLIC PROSECUTOR (AP)**

Counsel for the Respondent Nos.2 & 3: **Sri T.NIRANJAN REDDY**
for Sri T.NAGARJUNA REDDY

DATE OF JUDGMENT PRONOUNCED: **21.03.2016**

SUBMITTED FOR APPROVAL:

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

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

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? Cases Referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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CRIMINAL APPEAL No.836 of 2010
&
CRIMINAL REVISION CASE No.806 of 2011

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

Crl.A.No.836 of 2010 is filed by the appellant/A1 against judgment dated 23.06.2010 in Sessions Case No.190 of 2007 on the file of the I Additional Sessions Judge, Nellore, challenging his conviction for the offences punishable under Sections 498-A and 302 IPC.

2. CrI.RC.No.806 of 2011 is filed by the *de facto* complainant/PW.1 against the same judgment aggrieved by the acquittal of A2 & A.3 of the charges under Sections 498-A, 304-B and 302 IPC and under Sections 3 & 4 of Dowry Prohibition Act. During the pendency of this revision case, A.2 died on 22.10.2012.

3. The case of the prosecution in brief is that the deceased Lakshmi is the daughter of PWs 1 and 2. The marriage of A1 and the deceased was performed on 26.10.2001 and at the time of marriage, PWs 1 and 2 gave Rs.1 lakh and 12 sovereigns of gold as dowry. Both the deceased and A1 lived for some time happily and they were blessed with one male child. A1, to eke out his livelihood, opened a provisions shop and could not run it successfully and sustained loss and closed the same shortly. A1 got addicted to bad vices. It is alleged that A1 and his parents A2 & A3 subjected the deceased to cruelty for additional dowry and threatened her to kill her if she failed to meet their unlawful demands.

4. On 27.01.2007 the deceased telephoned her sister (PW 3) and informed her about the ill-treatment of A1 to A3 and requested her to pass the information to her parents (PWs 1 & 2). On the same day, PW 5, who is the husband of PW 3, received a phone call from A1 that the deceased died. On receiving the said information, PWs 2, 3, 5 and one Balaji went to the house of A1 and found the deceased kept in an auto and she was shifted to Bollineni Hospital, where she was declared dead. On 27.01.2007 at 6.30 p.m, PW 1, the father of the deceased, went to the I Town police station, Nellore and lodged a complaint under Ex.P1, basing on which, PW 10-Sub Inspector of Police registered a case in Cr.No.15/2007 under sections 302 and 304-B IPC initially against A1 to A3 and two others. On receipt of a copy of the First Information Report, PW 11-Sub-Divisional Police Officer, Nellore took up investigation, went to the scene of offence at 7.30 p.m and prepared Ex.P5-scene observation report in the presence of PW 7, seized MOs.1 and 2, drawn rough sketch under Ex.P20 and got the scene of offence photographed through PW 8. On requisition, PW 6-the Mandal Executive Magistrate, Nellore conducted inquest over the dead body of the deceased on 28.01.2007 in the presence of PWs 1, 2 & 7. Thereafter, the body of the

deceased was forwarded to the Government Hospital and PW 9 conducted autopsy on 28.01.2007 and she opined that the deceased died of asphyxia due to smothering. After completion of the investigation, PW 11 filed charge sheet against A1 to A3 stating that the deceased committed suicide by hanging due to harassment for dowry.

5. The learned Sessions Judge, on appearance of A1 to A3, framed charges under sections 498-A, 304-B and 302 IPC and under sections 3 & 4 of the Dowry Prohibition Act against them, for which, A1 to A3 pleaded not guilty.

6. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 11 and marked Exs.P1 to P21 and MOs.1 & 2. On behalf of defence, DWs 1 to 8 are examined and Exs.D1 to D10 are marked.

7. On appreciation of the oral and documentary evidence adduced on either side, the learned Sessions Judge, arrived at a conclusion that the death of the deceased was a homicidal death due to smothering and it was not a suicidal death due to hanging, and further observed that the prosecution failed to establish the charges under section 304-B IPC and under sections 3 & 4 of the Dowry Prohibition Act against the accused, and accordingly, passed the following sentences:

- i) A1 found not guilty of the charge under Section 304-B IPC and the charges under sections 3 & 4 of the Dowry Prohibition Act and he is acquitted for the said charges;
- ii) A2 & A3 found not guilty of the charges under sections 498-A, 304-B and 302 IPC and the charges under sections 3 & 4 of the Dowry Prohibition Act and they are acquitted for the said charges;
- iii) A1 found guilty of the charges under sections 498-A and 302 IPC and he is convicted and sentenced to undergo rigorous imprisonment for a period of one year for the offence under section 498-A IPC and he is further convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.200/- (Rupees two hundred only) in default, to undergo simple imprisonment for one

month, for the offence under section 302 IPC. It is ordered that both the sentences shall run concurrently.

8. Against his conviction, as aforesaid, A1 filed the criminal appeal and against the acquittal of A2 & A3, the *de facto* complainant/PW 1 filed the criminal revision case.

9. Sri T.Niranjan Reddy, learned senior Counsel appearing for the accused submits that having acquitted the accused of the charges punishable under Sections 3 and 4 of the Dowry Prohibition Act and also having acquitted A.2 and A.3 of the charges under Sections 302 and 498-A of I.P.C., the learned trial Judge erred in convicting the appellant/A1 for the offences punishable under Sections 302 and 498-A I.P.C. It is further submitted that in order to convict the appellant/A1 for the offence punishable under Section 302 I.P.C., the evidence that is required is not forthcoming in the instant case and basing solely upon the medical opinion that the death of the deceased might have been caused by smothering, the learned Judge has convicted the appellant/A1. Learned senior counsel further submits that even the medical evidence which is not always a conclusive proof of the cause of death, suffers from serious infirmities and that cannot be made the basis for holding that the appellant/A.1 has caused the homicidal death of the deceased wife. He has further submitted that having disbelieved the case of the prosecution witnesses with regard to the charge under Section 304-B I.P.C., the appellant/A1 ought not to have been convicted in the absence of there being any specific evidence with regard to the motive for the appellant/A1 to have caused the death of his wife. The learned senior counsel further submitted that the case rests only on the circumstantial evidence and in the absence of strong motive, one of the essential links in the chain of circumstantial evidence will affect the case of the prosecution and that even there is no satisfactory evidence on record to show that it is the appellant/husband who was last seen in the company of the deceased when she was found lying dead due to hanging, that the material evidence of the witnesses examined on behalf of the defence has not been properly appreciated and the same was discarded on the grounds which are

untenable, that the Court below ought to have seen that at the time when the deceased died, none of the accused were present in the room where A1 and the deceased were living and even the husband/A.1 came there on being alerted and immediately having found that there is still some life left in the deceased, they have immediately brought down the deceased from second floor and have shifted her in an auto to Bollineni Hospital where she was declared dead. In the process of removing the body from the hanging position and bringing it on to the road from a portion which is in the second floor of the building and being shifted in an auto, the deceased has sustained abrasions on the right and left elbow joints, left shoulder and over the lower border of mandible on right side. The Medical Officer having found the above injuries opined the same to be ante-mortem in nature. Learned senior counsel submits that if the deceased was done to death by A1 as alleged by the prosecution, she ought to have sustained injuries and her face would not have been as was noticed afterwards. Learned Counsel submits that in the absence of there being conclusive evidence, that the deceased died due to smothering, the conviction of the appellant cannot be sustained under Section 302 I.P.C.

10. Learned Counsel appearing for the *de facto* complainant/PW.1 who filed the Criminal Revision Case submits that having accepted the case of the prosecution insofar as A1 is concerned, the learned Sessions Judge has acquitted A2 and A3 of all the charges without appreciating the evidence on record in proper perspective. Therefore, the acquittal of A.2 (who, since died) and A3 needs to be set aside.

11. Learned Public Prosecutor while admitting the fact that the State has not challenged the acquittal of A1 for the offence punishable under Section 304-B I.P.C., and Sections 3 and 4 of the Dowry Prohibition Act and acquittal of A2 and A3 of all the charges, vehemently submits that the evidence on record has established that it is the husband/A1 who killed the deceased by smothering and the Court below has properly considered the material on record warranting no interference with the conviction and sentence of the appellant/A1.

12. We have carefully considered the respective submissions of the

learned counsel for the parties and perused the material on record.

13. The point for consideration is whether the prosecution proved its case against A1 to A3 beyond reasonable doubt so as to sustain the conviction and sentence recorded against A1, and whether there are any grounds to interfere with the acquittal of A2 & A3 of the charges alleged, or whether the same need to be set aside, modified or varied.

Point:

14. The facts that the deceased – Lakshmi was married to A1 on 26.10.2001, that they were blessed with a son and that the said Lakshmi died an unnatural death in her matrimonial home on 27.01.2007 are not in dispute. It is on record that the house where A1 and the deceased were living was a building with different floors and that the parents of A1 viz., A2 and A3 and another brother of A1 along with his wife – Jyothi, were all living in different portions of the same building. The Court below has also found as of fact that the accused were not having any financial problems as such and basing upon the evidence on record, both oral and documentary, it held that the ingredients constituting the offence punishable under Section 304-B I.P.C., so also under Sections 3 and 4 of the Dowry Prohibition Act were not established. In that view of the matter, the motive that is alleged for A1 to cause the death of the deceased, which is non-fulfilment of the demand for dowry cannot be believed and there is no other evidence on record to show that the husband/A1 had any other motive to kill his wife. It is no doubt true that since the deceased was found lying almost dead in the portion of the building in which she was living along with her tender aged son and husband, it is for the husband to put up a probable defence about the circumstances in which his wife died the unnatural death. According to the accused, the deceased was a woman of short temper and used to get worked up for trivial issues and as a matter of fact, on one occasion, when the mother of the deceased has scolded her for some reason, the deceased jumped from the two wheeler and sustained injuries. It is further the specific plea of the husband/A1 that there were no disputes in between them and that on the date of the incident, he went out on his work and on being informed over phone, he rushed to his house and all of them have shifted his wife to

hospital since she was still alive by then.

15. The presumptions that are available under Section 113-B of the Evidence Act cannot be invoked when the husband or his people are charged with an offence punishable under Section 302 I.P.C. For determining the guilt or otherwise of the accused for the offence punishable under Section 304-B I.P.C., such presumptions are permissible. Once the prosecution establishes the primary facts, it is for the husband or his relations to show the probable cause for a woman to have died an unnatural death and in the absence of such a probable defence, the Court can presume that the death of the woman is the dowry death punishable under Section 304-B I.P.C.

16. In the instant case, as already stated, all the accused including the appellant/A1 have been acquitted by the trial Court for the offence punishable under Section 304-B I.P.C., and also under Sections 3 and 4 of the Dowry Prohibition Act. The State did not challenge the said acquittals. Therefore, what is required to be seen is as to whether the evidence on record is sufficient for holding that it is the appellant/A1 who has committed the offence of murder.

17. On behalf of the prosecution, out of 11 witnesses examined, PWs 1 to 5 are the kith and kin of the deceased. They are the parents, three sisters and the brother-in-law of the deceased. The prosecution has not examined any independent witness during course of trial even though several of the neighbouring residents were examined by the police during the course of investigation. The charge sheet discloses that the investigating officer has recorded the statements of LW 3-Yerramsetti Ravi, LW 4-Agnihothram Veeraswamy, LW 8-Allahari Srinivasa, Lw 9-Thangiseti Balaji, LW 10-Botlagudur Lakshmi and LW 11-Botlagudur Chakradhar. All these listed witnesses are the residents of the immediate neighbourhood, but the learned public prosecutor has given up these witnesses and did not examine even a single witness from the immediate neighbourhood. It is no doubt true that it is the prerogative of the prosecution to examine or give up a particular witness but that does not mean that the prosecutor will not examine any independent witness merely because that such witness is not likely to support and help the case of the prosecution. The duty of the prosecution is to place all

relevant evidence before the Court for proper appreciation of the entire case based on record and it cannot withhold the examination of material witnesses, whose evidence may help the Court in determining the guilt or otherwise of the person in the dock. Out of the above listed witnesses, who have not been examined by the prosecution, LWs 3 & 4-Ravi and Veeraswamy were examined as DWs 2 and 5 on behalf of the accused.

18. Be that as it may, it shall now be seen as to whether the evidence of the parents, three sisters and the brother-in-law of the deceased in any way establish that it is A1-husband who was in the company of the deceased wife immediately before she was found hanging from ceiling hook with the help of a saree. It may be recalled that it is the specific contention of the accused that the deceased is a woman of short temper and might have resorted to commit suicide for unknown reasons at the time when her husband-A.1 was not in the house. The incident took place between 10.00 a.m to 01.00 p.m on 27.01.2007 in the absence of inmates of the house.

19. On a careful perusal of the evidence of PWs 1 to 5, it is noticed that none of them spoke about the presence of A.1 in the house when the deceased was found hanging. PW 1, the father of the deceased stated that on the date of the incident at about 1.30 of 2 p.m when he was on duty, he was informed about the death of the deceased and he came back and by the time he reached the house, the dead body of his deceased daughter was being taken to Bollineni Hospital from the house. He further deposed that the family members of the accused harassed his daughter as she has no job and her husband (A.1) was keeping idle, whereas the second son of A.2 and A.3 and the wife of A.2 were earning members and therefore, they used to abuse his deceased daughter saying that if she dies, they would perform another marriage to A.1 by getting more dowry and hence she was murdered for dowry. From this part of the statement of PW 1, it is difficult to hold that it is A.1 who has caused death of the deceased and on the other hand, what appears from his evidence is that the deceased was being subjected to harassment and therefore, she died. Absolutely, nothing is spoken to by PW 1 to prove that it is A.1 or any other accused who have caused the murder of

the deceased, as alleged. Certain admissions made by PW.1 in his cross examination tend to show that A.1 cannot be said to be the person who caused the death of the deceased. It is admitted by PW 1 that it is A.1 who informed him over phone about the death of the deceased and the witness further clarified that A.1 has informed his wife (PW 2) about the death of the deceased over phone and thereafter, PW 2 informed him and he came back from his duty. He also admits that he has mentioned in the complaint Ex.P1 that by the time he reached the scene of offence, A.1 was bringing the dead body of the deceased in an auto, pretending as if he is innocent. He further admits that in his statement recorded by the Executive Magistrate (PW 6), he stated that by the time he went there, his son-in-law/A.1 is available and they found that it is A.1 who was bringing the dead body of the deceased from the second floor portion to the ground and being taken to the hospital, since it was found that the deceased was still having some life.

20. On the same lines is the evidence of PWs 2, 3, 4 and 5, who are mother and two sisters and husband respectively of PW.3. According to PW 2, on being informed about the death of the deceased, they all went there and she asserts that unable to bear the harassment and acts of the accused, her daughter died. She does not say that it is A.1 who has caused the death of the deceased. She did not even say that they came to know that A.1 was inside the house at the time when the deceased was found hanging to the hook with the help of a saree. PW 2 appears to be sufficiently worldly-wise woman for the reasons that she admits that she is doing business in sarees. Therefore, it cannot be said that she does not know the difference between a person being killed or having committed suicide. If the evidence of PW 2 is carefully perused, according to her, the deceased has committed suicide, allegedly due to harassment at the hands of the accused.

21. PW 3 is the elder sister of the deceased who incidently resides very close to the house of the accused and the deceased. She is the wife of PW 5, who is working as a constable in the police department. PW 5 was the person who was first informed about the death of the deceased. According to PW 3, her deceased sister told her over phone that her husband (A.1) and her in-laws are harassing her and demanding money. On the date of the

incident, PW 3 claims that in the morning the deceased telephoned her and said that her husband is demanding Rs.1 lakh and is harassing her and was threatening her that they will kill her if the additional dowry of Rs.1 lakh is not given. She further stated that in the morning of 27.01.2007 her mother, brother and others were discussing in her house as to what has to be done about it and in the meantime phone call from A.1 was received by PW 5 that the deceased is dead and immediately all of them rushed to the house of the deceased and found that the deceased was kept in an auto and that A.1 was present there at that time. PW.3 further deposed that they along with A.1 took the deceased to Bollineni hospital where she was declared dead. In the cross examination, PW 3 denies having stated before the police as in Ex.D6 to the effect that she learnt from the neighbours that the deceased bolted the doors from inside. The Investigating Officer asserts that PW 3 told him as such during his investigation and therefore, the statement is recorded to that effect under section 161 Cr.P.C.

22. PW 4 is another sister of the deceased and her evidence does not in any way further the case of the prosecution. Similar is the evidence of PW 5, the brother-in-law of the deceased. He also admits that it is A.1 who telephoned him and informed about the death of the deceased and immediately he went there and found A.1, PWs 2, 3 and his brother-in-law taking the deceased in an auto to the hospital. Such information could not have been given by A.1 since it is admitted case that the deceased was declared dead on reaching the Hospital and all the witnesses including A.1 found some life in her. In the cross examination, he feigns ignorance as to whether he informed the police in his statement recorded during course of enquiry that he learnt from the neighbours that the deceased bolted the door from inside.

23. The evidence of PWs 1 to 5 shows one fact viz., at the time when they went to the scene within minutes of being informed over phone, they all rushed there and they found that it is A.1 who was bringing the deceased wife from the second floor portion to the ground floor for taking her to hospital. Their evidence do not however show that A.1 was present in the house before the incident. Their evidence however establishes that the day

when the deceased died, son of the deceased aged 1 year 3 months was in the room and was crying. They also admitted that just three months prior to the death of the deceased, both A.1 and deceased have celebrated the first birthday of their son on grand scale and took photographs and Ex.D1 is the album. It is also admitted by PWs 1 to 3 that about 6 months prior to the death of the deceased, the Seemantham function of the deceased was performed in the house of the accused on a grand scale and they participated and took photographs which are Ex.D2 (album). It is also admitted by PWs 1 and 2 that A.2 and A.3 used to go on pilgrimage and PW 2, the mother of the deceased used to accompany them. It is also in their evidence that when the deceased had two abortions prior to the birth of the surviving child, A.2 and A.3 went to Kasi pilgrimage and thereafter, the boy was born and therefore, they named the boy as "Kasi".

24. As against the above evidence, the accused has produced the evidence of neighbouring witnesses who were in fact examined by the police and were given up by the prosecution during the trial.

25. DWs 1, 7 & 8 are the bank officials where A.1 was having the bank account. They are examined to say and show that both at the time of marriage between A.1 and the deceased and around the period when she died, there was substantial balance in the account of A.1. The bank officials produced the bank statements in support of their evidence. This evidence is relied upon by the accused to establish that absolutely there was no need whatsoever for the accused to harass the deceased for want of additional dowry. Even at the time he married the deceased, A.1 was having balance in his bank account in the range of 5 to 6 lakhs and at the time when the deceased committed suicide, A.1 was having balance of more than Rs.3 lakhs in his bank account. It is submitted by A.1 that he was doing business in real-estate and had sufficient income and the marital life of A.1 and the deceased was going on very smoothly and A.1 and his family members have celebrated Srimantham of the deceased and the first birthday of the son on a grand scale as admitted by the prosecution witnesses and also borne out from Exs.D1 and D.2.

26. DW 2 is the listed witness No.3 in the charge sheet, DW 3 is the

father of the second daughter-in-law of A.2 and A.3, DW 4, a neighbouring resident, DW 5 is cited as listed witness in the charge sheet and DW 6 is another neighbouring resident. They all gave consistent evidence which is to the effect that on the date of incident they heard shouts from the house of A.2 and they all rushed there and they were told that the deceased was inside the room which was bolted from inside and that the boy was crying inside. From their evidence, it is clear that they opened the door forcibly and found the deceased hanging with the help of a saree to the ceiling hook. They brought down the body of the deceased, telephoned to A.1 and all of them shifted the deceased to the hospital as they found that the deceased was having some breath. These independent witnesses have given detailed account as to what happened on the date of incident. It is not even suggested to any of these witnesses that A.1 was present in the house when the deceased was found hanging. It is asserted by DWs 2 and 5 that A.1 came there only on receiving phone call and immediately all of them took the deceased to the hospital. The witnesses examined on behalf of the accused are the residents of immediate neighbourhood and they are independent witnesses.

27. Upon a careful perusal of the evidence of the prosecution witnesses and the defence witnesses, we have no hesitation in holding that at the time when the deceased died in the house, A.1 was not there and therefore, it cannot be said that it was A.1 who caused the death of the deceased. Their evidence no doubt show that the deceased committed suicide by hanging herself in the room in the absence of her husband and when A.2 and A.3 were in a different floor.

28. As a matter of fact, even the learned Sessions Judge has believed the evidence of the witnesses which is to the effect that the marital life of the deceased was going on happily and there was no reason whatsoever for the accused to have harassed the deceased for want of additional dowry. However, the learned Sessions Judge by placing reliance on the evidence of Medical Officer PW 9 and post mortem certificate Ex.P16 came to the conclusion that it was A.1 who caused the death of the deceased by smothering and thereafter hanged the body of the deceased to make it

appear that the deceased committed suicide. Therefore, what is now required to be seen is the medical evidence on record so as to arrive at a conclusion whether the deceased was done to death by smothering or whether it was a case of suicidal death due to hanging.

29. PW 9 is Dr.P.Aparna, who was working as Civil Assistant Surgeon in the Government Hospital, Nellore and she was pursuing her post-graduation in medicine. She along with another Civil Assistant Surgeon were said to have conducted post mortem examination on the dead body of the deceased at 4 p.m. on 28.01.2007. They opined that the deceased died more than 24 hours prior to the commencement of the post mortem examination. The Medical Officer PW 9 found the following external appearances on the dead body of the deceased:

- 1) Rigor mortis passed off all over the body;
- 2) Face swollen and congested;
- 3) Bleeding from both nostril present;
- 4) On opening eyes congestion present;

She also found the following external injuries on the dead body of the deceased:

- 1) Contusion and congestion of 2 x 2 c.m over both upper and lower lips inner aspects;
- 2) Three abrasions of about $\frac{1}{2}$ x $\frac{1}{4}$ th c.m posterior aspect of right elbow joint;
- 3) Two abrasions of about $\frac{1}{2}$ x 1 c.m over posterior aspect of left elbow joint;
- 4) An abrasion of about 4 x $\frac{1}{2}$ c.m in size over lower border of mandible on right side.
- 5) An abrasion of about 1 x $\frac{1}{4}$ th c.m over left shoulder
- 6) All the above injuries are anti mortem in nature;

PW 9 further found the following internal injuries in the post mortem examination;

Scalp layers intact and congested. Skull bone intact. Brain and meninges congested. Trachea, Pharynx and Larynx on cut section congested.

Hyoid Intact. Lungs on cut section congested

Heart: Normal

Stomach: Empty

Liver: on cut section congested

Spleen: cut section congested

Kidneys: congested

Urinary bladder: Empty
Spine: Normal

After obtaining the report of the Forensic Science Laboratory, PW 9, the Doctor, opined that the deceased might have died due to Asphyxia due to smothering. In the cross examination, PW 9 admitted that Asphyxia can be caused by pressing the chest with force or squeezing the neck or by closing the mouth and nose. She further deposed that she cannot say as to what was the method adopted in the instant case for smothering. The ribs of the deceased were found to be intact and there was no injury on the nose of the deceased. However, there was an injury on the lower border of mandible, but the Doctor could not say whether the said injury is a ligature mark or not. The Medical Officer further stated that the injury that was noticed on the lower mandible could have been caused by applying pressure with the help of any blunt object like, stick, rod etc. The Doctor did not notice any froth coming out of the mouth and did not also observe any blood bisters (carbo marks) on the face or in the lungs or in the eyes. It is further noticed from the evidence of PW 9 that smothering can be caused by closing the mouth and nasals with a plastic bag or injection of any foreign body into larynx or inhalation of poisonous gasses and by café coronary. PW 9 further certified that the deceased was an able bodied woman and she cannot say whether a single person can cause smothering by closing the mouth and nostrils of an able bodied person. PW 9 further clarifies that generally the death by smothering will be caused of infants, old or sick persons. PW 9 found that the eyes of the deceased were closed and did not find any injury on the waist. She further stated that if the dead body was laid on the ground for some time, the post mortem stains will be there under the lower portion of the body. It is further in the evidence of PW 9 that she has not noted the fracture of septum and flatend note. She admits that in majority of cases ecchymosed with lividity of limbs will occur in the case of smothering which was not noted in this case. PW 9 admits about the opinion expressed by Dr.K.S.Narayan Reddy in his Book Forensic Medicines and Toxicology.

30. Dr.K.S.Narayana Reddy in his Book "Medical Jurisprudence and Toxicology" described "smothering" as under:

“Smothering: This is a form of asphyxia which is caused by closing the external respiratory orifices either by the hand or by other means, or blocking up the cavities of the nose and mouth by the introduction of a foreign substance, such as mud, paper, cloth, etc. Smothering has been used synonymously with suffocation by some authors.”

The author further says that homicide is possible by smothering where the victim is incapacitated by drink or drugs, very weak, child or old person, in ill-health and when the victim is stunned by a blow. The author further says that usually the mouth and nose are closed by a hand or cloth or the face may be pressed into a pillow. The author further gives the following symptoms of homicidal smothering which can be detected on autopsy.

“Autopsy: Obstruction by bed clothing, a pillow, a cushion, etc., applied with skill, may not leave any external signs of violence, especially in the young and the old. When the face is pressed into a pillow, the skin around the nose and mouth may appear pale or white due to pressure. Petechiae and congestion are rarely seen unless the victim struggles and fights for breath. Saliva, blood and tissue cells may be found on the pillow. If the orifices are closed by the hand, there may be scratches, distinct nail marks, or laceration of the soft parts of the victim’s face. The lips, gums and tongue may show bruising or laceration. Slight bruising may be found in the mouth and nose, which should be confirmed by microscopy. The asphyxial signs and symptoms are severe, because death usually results due to slow asphyxia and often the fatal period is three to five minutes. The head and face may show intense congestion and cyanosis with numerous petechial haemorrhages in the skin of the face and beneath the conjunctivae. Blood may ooze out from the mouth and nose. The tongue may be protruded and may have been bitten. The air-passages contain bloodstained frothy fluid, with red blood cells and desquamated respiratory epithelial cells. The lungs are congested, oedematous and show areas of haemorrhage and collapse with areas of emphysema. Petechiae are usually present, even in cases where hypoxic changes are slight. Often, the head and face enclosed in a plastic bag are pale, with few petechial enclosed in a plastic bag are pale, with few petechial haemorrhages in the eyelids and pericardium or there may be no asphyxial signs. In some cases death is rapid due to reflex

cardiac arrest, and asphyxial signs are absent.

Internal: Blood-stained frothy fluid is present in air-passages. Mucus may be found at the back of the mouth. Slight acute emphysema and oedema of the lungs with scattered areas of atelectasis, petechiae and congestion are the major findings. The internal organs are deeply congested and sometimes show small haemorrhages. In the absence of localizing signs at autopsy, the background to the death and the circumstances in which the body was found are of help. The finding of the material from the victim such as mucus, squamous epithelium on the smothering material is also of help. If a person is buried alive, earth and sand will be found in the respiratory tract.

Homicidal smothering is extremely difficult to detect. The autopsy may reveal asphyxia, but there may not be any corroborative medical evidence to prove foul play. The pathological changes must be interpreted keeping in view the medical history of the deceased, the scene of death, and the specific circumstances surrounding the death.”

31. If the opinion of Dr.K.S.Narayan Reddy, who is an expert in the field is compared with the evidence on record, it is difficult to say that the death of the deceased could have been caused due to asphyxia or due to smothering.

32. From the evidence of PW 9, the Doctor, and the post mortem certificate Ex.P16, it cannot be said that the medical evidence which is not corroborated by any other evidence whatsoever on record supports the opinion that the cause of death of the deceased was Asphyxia due to smothering, as the signs which usually are supposed to be noted on a body in such cases were not found by the Medical Officer.

33. We have also perused the photographs and also the inquest panchanama. As per the evidence of PW 8, he had taken photographs at about 7.30 p.m. on 27.01.2007, whereas the post mortem was held at 4 p.m. on 28.01.2007. The photos do not show any of the symptoms which are usually found in the case of death due to smothering, as opined by Dr.K.S.Narayan Reddy in the passage, extracted above. Absolutely, there are no injuries on the nose or on the lips of the deceased. There are no marks or lacerations on any soft parts of the face of the victim. The lips, gums

and tongue did not bear any signs of bruising. Blood was not oozing from the mouth or nose. The tongue had not protruded or bitten.

34. Upon careful perusal of the evidence of the Medical Officer PW 9, the other evidence on record and the opinion of the expert, we have no hesitation in holding that from the material on record, it cannot be said that the deceased was done to death violently due to smothering, as has been held by the learned Sessions Judge. Nothing incriminating has been seized from the place where the dead body was lying, which suggests that any kind of pressure was applied on the neck of the deceased who admittedly was an able bodied strong woman, as found by PW 9, the medical officer, and also as noticed from the photographs. If such a person is done to death violently by one person, several incriminating objects are to be found at the place where the said act was committed. Admittedly, even according to the prosecution witnesses, they reached the scene within minutes after the incident and none of them noticed anything in the room which suggests that any pressure with any material object was applied on the deceased which incapacitated her and was thereafter smothered to death. Therefore, we are unable to concur with the view expressed by the learned Sessions Judge that the medical evidence conclusively established that the deceased was killed by A.1 by smothering her.

35. The evidence of the prosecution witnesses on record do not even show that the deceased was subjected to any harassment or cruel treatment at the hands of the accused. On the other hand, as noticed above from Exs.D1 and D.2 which are photographs taken just two or three months before the death of the deceased, it cannot be said that the accused subjected the deceased to any cruel treatment or harassment. It is also on record that for the well being of the deceased and for her begetting children, A.2 and A.3, being father-in-law and mother-in-law, worshipped the God and went on pilgrimage to Kasi along with PW 2, the mother of the deceased. Thereafter, when the deceased conceived and was blessed with a son, they named the child as "Rama Kasi". All these circumstances do not show that the deceased was subjected to any cruelty or harassment so as to convict the appellant/A.1 for the offence punishable under section 498-A I.P.C.

Criminal Revision Case No.806/2011:

36. With regard to the revision filed by PW 1, it is noticed that the evidence on record has been properly appreciated by the learned Sessions Judge in so far as acquittal of the accused of certain charges is concerned. It is found that the evidence on record does not establish that there was any demand for dowry at the time of marriage or subsequent thereto nor was there any harassment for additional dowry. As a matter of fact, it is admitted by PW 1 that major part of expenses even for the marriage were met by A.1 by himself. There is also documentary evidence to show that around the period when A.1 and the deceased were married, A.1 was having bank balance of more than Rs.6 lakhs. Nearly 6 years after the marriage also the bank balance of A.1 was in the range of Rs.3 lakhs as spoken to by DWs 1, 7 and 8, who are the Bank Officials and who produced the Bank statements Exs.D8, D9 & D10. The evidence of the prosecution witnesses does not also show that the deceased was killed by A.1. None of the prosecution witnesses even remotely say that it is A.1 who has violently killed the deceased. On the other hand, the evidence of the prosecution witnesses as well as the defence witnesses clearly goes to show that the deceased committed suicide by hanging and since the child in the room cried, A.2 and A.3 and several neighbours assembled there and after forcibly opening the door, they found the deceased hanging, brought her down and having found her still alive, immediately called A.1 and all of them took the deceased to Bollineni hospital where she was declared dead. Therefore, acquittal of A.2 & A.3 by the learned Sessions Judge cannot be said to suffer with any irregularity or illegality or that the findings suffer from any perversity warranting interference therewith under the revisional jurisdiction of this Court.

37. In the result, Criminal Appeal No.836 of 2010 filed by A.1 is allowed. The conviction and sentence recorded against the appellant/A.1 of the charges under Section 498-A and 302 IPC are set aside. Consequently, the appellant/A.1 shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded

to him.

38. Criminal Revision Case No.806 of 2011 filed by the *de facto* complainant/PW.1 against acquittal of A.2 & A.3 is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:21.03.2016

Dsr/Smr

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Note:

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B/o

Dsr