

* HON'BLE SRI JUSTICE SURESH KUMAR KAIT

+Crl.A. No. 488 of 2016

%28-11-2016

Vunyala Gopal

... Appellant/
De facto complainant

Vs.

\$ Lolakpuri Mahender and four others

... Respondents

!Counsel for the Appellant: Sri S.M. Deshmukh

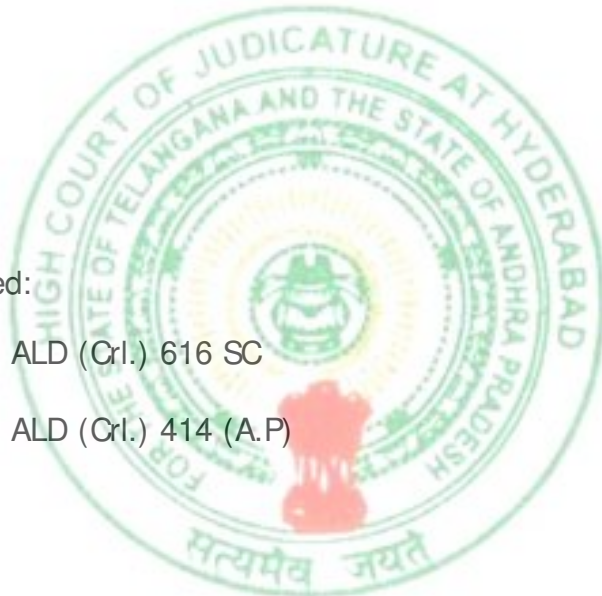
Counsel for Respondent No.5: Public Prosecutor

< Gist :

> Head Note:

? Cases referred:

1. 2011(1) ALD (CrI.) 616 SC
2. 2007(2) ALD (CrI.) 414 (A.P)



HON' BLE SRI JUSTICE SURESH KUMAR KAITCrI.A. No. 488 of 2016JUDGMENT:-

This Criminal Appeal is preferred by the appellant - *de facto* complainant seeking to set aside the judgment of acquittal dated 01.03.2016 delivered in S.C.No. 67 of 2010 BY III Additional Metropolitan Sessions Judge, Hyderabad and punish respondent Nos.1 to 4 - accused for the offences charged against them.

This appeal is filed on certain following grounds:

The learned Judge failed to appreciate the fact that the entire case of the prosecution was based on circumstantial evidence and the prosecution had diligently and very meticulously proved the chain of circumstances leading to the guilt of the accused. The deceased died in the house of the accused and the prosecution succeeded in leading the evidence to show that shortly before the commission of the crime, they were seen together, hence, the burden was on the accused to explain regarding the circumstances which led to the unnatural death of the deceased.

The learned counsel for the appellant submits that the trial Court failed to consider the evidence of PWs. 2 to 5 on the ground that there are omissions, contradictions and improvements in the evidence of these witnesses. However,

PW2 – *De facto* complainant, who is the father of the deceased, categorically stated about the harassment meted out to the deceased by the hands of accused with regard to demand of additional dowry. He further deposed that during the marriage negotiations, he had agreed to give one Motorcycle and 10 tulas of gold as per the demand of the accused. However, after the marriage was fixed, the accused demanded 16 tulas of gold and one Chetak Scooter and also utensils worth Rs.16,000/- . Accordingly, the complainant arranged the same. Later, the accused did not allow the deceased to join in Teacher Training Course and continue her studies. PW2 further deposed that when the deceased came to his house on the eve of Deepavali festival, he gave her one tula of gold and sent her to her in-laws' house, but for about 18 months, the deceased was not allowed to come to her parents' house. When PW2 questioned about it, the accused demanded an amount of Rs.2.00 lakhs.

The learned counsel further submits that the trial Court also failed to appreciate the evidence of PW3, who is the son of the deceased and A1 and an important witness. He categorically deposed the mode and manner in which the incident occurred and the deceased was harassed by the accused. PW3 further deposed that one day prior to the death of the deceased, galata (quarrel) took place between

his mother and father wherein his father abused and beat his mother. He also deposed that on 25.07.2009, his father asked him to go to the ground floor and watch television by raising its volume.

The learned counsel for the appellant – *de facto* complainant has submitted that the trial Court has grossly erred in not appreciating the fact that the statements of the witnesses recorded under Section 161 Cr.P.C. are meant to be brief statements, and minor discrepancies and omissions, which may occur in the evidence by itself, are not grounds to throw out the entire evidence. The trial Court has failed to consider the evidence of PWs.2 to 5, the father and relatives of the deceased, that they heard the news of the death of the deceased and immediately rushed to the scene of offence. The trial Court also ignored the depositions of PWs.7 to 9, who categorically deposed about the harassment meted out to the deceased by the accused and that prior to the death of the deceased they heard some galata in the house of the accused.

Respondent Nos.1 to 4 – accused were charged with the offences punishable under Sections 498-A and 306 IPC and Sections 3 and 4 of Dowry Prohibition Act.

The main allegation made in the complaint which culminated into the F.I.R. is that due to harassment of A1 to A4, the deceased – Navanitha committed suicide on

26.07.2009 between 08:00 and 09:00 A.M. by hanging herself.

To substantiate the case of the prosecution, it examined PWs.1 to 13. PW1 is a panch witness for observation of scene of offence; PW2 is the *de facto* complainant and father of the deceased; PW3 is the son of the deceased and A1 and he is shown as eye-witness; PW4 is the sister of the deceased and circumstantial witness; PW5 is the brother of the deceased and circumstantial witness; PW6 is relative and circumstantial witness; PWs.7 to 9 are neighbours and are said to be the eye-witnesses to the incident; PW10 is the Doctor who conducted post-mortem examination on the dead body of the deceased; PW11 is a panch witness for inquest; PW12 is the Assistant Sub-Inspector of Police who registered the case and issued F.I.R. and PW13 is the Sub-Inspector of Police who investigated into the case and filed charge sheet.

When the accused were examined under Section 313 Cr.P.C., they stated that A1 and the deceased lived together for about 14 years, and during this period, four members in their relatives died. Hence, the deceased, out of fear, came in depression and committed suicide when they were not present at the place of crime.

PW2, who is the *de facto* complainant and the father of the deceased, deposed that on demand made by A1 to A4, he gave gold, one Scooter and household articles at the time of

the marriage. Later, when the accused demanded Rs.2.00 lakhs, he expressed his inability, but subsequently he gave some amount to the accused. He further deposed that on 25.07.2009, during night time, her daughter (PW4) received a telephone call from the deceased stating that her situation is worst. But later, he talked to the deceased and lodged the complaint – Ex.P3 to the police against the accused. He further deposed that he has not stated before the police as in Exs.D18 and D21 to D24. But, PW13, the investigating officer, in his cross-examination, deposed that there is no whisper in Ex.P3 with regard to giving dowry or demanding dowry at the time of the marriage. PW2 has stated before him as in Exs.D18, and D21 to D24. Ex.P8 is the statement of PW2 recorded under Section 161 Cr.P.C. through PW13 on 26.07.2009, but the same was not filed along with the charge sheet. Moreover, during the chief-examination of PW13, the investigating officer deposed that PW2 has not stated before him with regard to demand of dowry and giving dowry to the accused. Thus, the statement of PW2 recorded under Section 161 Cr.P.C. through PW13, and his deposition in chief-examination, are contrary to each other.

PW4, who is the sister of the deceased, deposed that on 25.07.2009, during night time, she received telephone call from the deceased stating that her condition was worst. PW2

also deposed that PW4 received telephone call from the deceased during night time on 25.07.2009. But PW13, in his cross-examination, stated that PW4 has not stated before him that the deceased had given missed call to her on 25.07.2009 during night time. Thus, it is clear that PW4 has not stated anything before the investigating officer with regard to receiving of phone call from the deceased. Moreover, PW3 deposed that he has not collected call data to know that the deceased telephoned to PW4, and thereafter, PW2 tried to talk to her on phone.

PW3 is the son of the deceased and A1. In his chief-examination, he deposed that A1 to A4 used to harass the deceased and he saw his mother hanging to the ceiling fan on 26.07.2009 in the morning hours. He further deposed that A1, A3 and A4 are not willing to take him and his sister to school and PW2 used to give money to him and to his sister towards educational fee. A1 to A4 were not interested to educate him and his sister in reputed school. However, in cross-examination, he expressed his ignorance with regard to joining in reputed school at the instance of the accused. Moreover, PW13 in his cross-examination deposed, that PW3 has not stated before him what he deposed in his chief-examination. Accordingly, the trial Court has not believed his evidence.

PWs.7 to 9 are the neighbours and are shown as eye-witnesses. These witnesses are important but PW7 deposed that on 25.07.2009 at about 08:00 p.m., he heard some noise from the house of the accused. Next day morning, he came to know that the deceased committed suicide by hanging. But PW13, in his cross-examination, deposed that PW7 has not stated before him that on 25.07.2009 at about 08:00 p.m., he heard some noise from the house of the accused. Thus, it is established that PW7 has not stated before the police what he deposed in his chief-examination.

According to PW8 – M. Saraswathi, there was quarrel in the house of the accused, and on the next day, she came to know that the deceased committed suicide by hanging. However, in her cross-examination, she deposed that PWs.2 and 5 accompanied her to the Court to give evidence. PW5 was sitting in the Court hall when she was deposing in the Court. She further deposed that PW5 came to her house twice to bring her to the Court for giving evidence. Hence, from her cross-examination, it is established that she deposed at the instance of PWs.2 and 5. Moreover, she was not the witness to say as to how the deceased committed suicide.

PW9 – A. Pushpa Rani deposed that one day prior to the incident, there was quarrel between the deceased and the accused, and on the next day, she committed suicide but she

did not know the reason for quarrel between them. In her cross-examination, she deposed that she did not go to the house of the accused one day prior to the death of the deceased and not see them while quarrelling. Moreover, she admitted that she has not stated before the police that quarrel took place one day prior to the death of the deceased. In her cross-examination, she further stated that PW5 tutored her to give evidence.

In view of the entire evidence of the prosecution witnesses and the statements of the accused recorded under Section 313 Cr.P.C., there are material contradictions and improvements in the evidence of the prosecution witnesses.

In the case of Dr. Sunil Kumar Sambhudayal Gupta and Others v. State of Maharashtra¹ the Apex Court held that the evidence of prosecution witnesses is full of contradictions and improvements. None of the prosecution witnesses made any allegation of demand of dowry or ill-treatment earlier period. Alleged demand for a thin chain that too after 6½ years of marriage, is so unnatural and cannot be held as a dowry demand.

The marriage between A1 and the deceased had taken place on 19.11.1996 and they were blessed with two children who were of school going age at the time of the alleged commission of offence. Neither the deceased nor the children

¹ 2011(1) ALD (CrL.) 616 SC

had ever made any complaint to the parents of the deceased or any of their relatives regarding harassment of A1. With regard to Section 306 IPC, the defence is that the prosecution has to prove its case that there are abetment and instigation immediately before commission of suicide. In the absence of instigation and intentional aid to the deceased to commit suicide, the accused cannot be convicted of the offence punishable under Section 306 IPC. In the present case, there is no evidence to show that due to the instigation and intentional aid to commit suicide, the deceased committed suicide.

As stated by the accused, instigation in the statement under Section 313 Cr.P.C. would mean that four members of their family died in a very short period, hence, out of fear, the deceased committed suicide. PW9 who is the neighbour to the accused, in his examination, admitted that the deceased wanted to vacate the house because of the death of several persons in their families within short time. Even as per the evidence of PW2, several persons died in the family of the accused. Hence, their evidence is lending support to the contention of the accused.

In the case of Shaik Hussain v. State of A.P.², this Court held that if the deceased committed suicide unable to bear harassment, and same to be proved by the evidence.

² 2007(2) ALD (CrI.) 414 (A.P)

However, mere allegations would not suffice. On the date of occurrence of the alleged offence, if there was abetment, and in pursuance thereof, the deceased committed suicide that is relevant. None of the prosecution witnesses has proved that the abetment of the accused lead to the committal of suicide of the deceased. In the absence of the evidence in this regard, it will not be possible for the Court to convict the accused under Section 306 IPC.

After careful perusal of the documents filed by the appellant and the judgment under appeal, I find no discrepancies in the judgment delivered by the trial Court.

Hence, I find no merit in the Criminal Appeal, and the same is, accordingly dismissed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

28.11.2016

Note: L.R. Copy to be marked

b/o

bcj