

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Appeal No.1641 of 2010

JUDGMENT : (oral)

(per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant-A1 has challenged the judgment, dated 30.7.2010 passed in Sessions Case No.84 of 2009 by the VII Additional Sessions Judge (FTC), Visakhapatnam, whereby accused No.1 is held guilty and convicted for the offence punishable under Section 302 I.P.C. and sentenced to life imprisonment.

2. The case of the prosecution is that the deceased was a student and pursuing degree at Narsipatnam. A1 developed friendship with the deceased and the same was turned as a love, however, A1 pretended love with the deceased by suppressing the subsistence of his marriage with some other lady. After sometime, she came to know about the marriage of A1 and thereupon, A1 and deceased used to quarrel for the same. On account of the said circumstances, the deceased used to visit Gyrapeta to meet A1 frequently. On 1.4.2006, i.e., one day before the date of offence, the deceased came to the house of A3, who is close associate of A1 and deceased. A1 met the deceased at the house of A3 on receipt of information about the presence of deceased at the house of A3. A2 also came with A1 to the house of A3 on that night. A1 to A3 and deceased stayed in

the house of A3 on that night. Again, on 2.4.2006, there were hot exchanges between A1 and the deceased and that deceased told to A1 that her family members are suspecting the affair and threatened him that she would commit suicide, if he would not marry her. On that, A1 grew wild towards deceased and pressed neck of deceased tightly with his both hands. A2 caught hold of hands of the deceased by restricting her movements. Deceased struggled for her survival, but could not succeed and lost her breath. A1 took the handbag of deceased and kept the same in secret place in the corner of the house. A2 took away the clothes of deceased and kept in secret place elsewhere. Meanwhile, wife of A3 came there and opened the door by questioning that what was going there and what happened to the deceased, as she heard the murmurs of the deceased. At that time since A1 and A2 were in act of committing murder of the deceased, they threatened wife of A3 not to disclose the offence to anybody, otherwise she would also meet the same fate.

3. Further case of the prosecution is that about 8.00 PM, A3 returned to his house and then his wife narrated the incident to him. Thereafter, A1 to A3 carried the dead body of deceased to bund of Jagadamba tank and buried the same with crowbar and spade. Subsequently, hands of deceased came out from the ditch and then the death of the deceased was unearthed. Thereafter, inquest was held over the dead body of deceased by M.R.O. Inspector of Police taken up investigation; examined witnesses; observed the scene of offence;

accused confessed their guilt; Doctor conducted postmortem over the dead body of the deceased and arrested A1 and A3.

4. After appearance of accused and on hearing, charge under Section 302 I.P.C. was framed against A1 and charges under Section 302 read with Section 34 I.P.C. were framed against A2 and charge under Section 201 I.P.C. was framed against accused Nos. 1 to 3 and read over the said charges to the accused to which they denied and claimed to be tried.

5. In order to prove its case, prosecution examined P.Ws.1 to 16 and got marked Exs.P1 to P20 and M.Os.1 to 10. After closure of prosecution evidence, all the accused were examined under Section 313 Cr.P.C. and they denied the evidence surfaced against them, however, none of the witnesses were examined on behalf of accused and no documents were marked on their behalf.

6. During trial, the trial Court framed three points for consideration as under :

1. Whether prosecution is able to prove guilt of A1 for the offence under Section 302 I.P.C. beyond reasonable doubt ?
2. Whether prosecution is able to prove guilt of A2 for the offence under Section 302 read with Section 34 I.P.C. ?

3. Whether prosecution is able to prove guilt of A1 to A3 for the offence under Section 201 I.P.C. beyond reasonable doubt ?

7. Ultimately, A2 and A3 were acquitted from all the charges. However, A1-appellant herein was convicted for the offence punishable under Section 302 I.P.C.

8. We have heard learned counsel for the parties.

9. The learned counsel for the appellant submits that the present case rests on the circumstantial evidence and there is no eyewitness to the incident. The chain of circumstantial evidence is not complete. No one has seen the deceased with the appellant before the death. P.W.8 – paternal aunt of the deceased is an interested witness and hence her deposition cannot be relied upon. A1 and the deceased were of the different villages. There was no point of having friendship with each other. The appellant is falsely implicated in the case and the trial Court has ignored the evidence which was in favour of the appellant.

10. P.W.1 deposed that on 6.4.2006, he was informed that one dead body is present at Jadagalamanda cheruvu and on that, he went to the scene of offence and noticed that hands of the deceased are seen outside and it is female dead body. Accordingly, he immediately proceeded to the Police Station and present Ex.P1-report and gave report to M.R.O. also. Evidence of P.W.6 – R.I. coupled with P.W.7 – mediator and evidence of P.W.13 - the then M.R.O. and

P.W.14 - Investigating Officer reveals that on receiving Ex.P1, P.W.14 – I.O. sent requisition to P.W.13 and in their presence, dead body of the deceased was exhumed from the pit on 7.4.2006 at about 11.00 AM and observed the scene of offence and prepared Ex.P4 - Observation Report there and held inquest over the dead body of deceased from 11.00 AM to 2.30 PM and prepared Ex.P5 - Inquest Report and witnesses were examined during inquest and dead body was sent for postmortem examination.

11. The evidence of P.W.2 is that he knew accused and A1 and A3 and A1 and deceased used to stay together. On the day of incident, there was a festival in their village and all the villagers went to the program and after three days, villagers searched for deceased and finally came to know that she was buried in a pit and the appellant killed the deceased.

12. P.W.3 deposed that he knew the appellant and deceased and saw the deceased with A1 and she died about three years ago and he came to know about the dead body. Hands of the dead body were seen outside from the pit and Police brought the dead body outside of the pit. All the villagers said that A1 killed the deceased – as per the rumours. P.W.4 deposed that he knew A1 and A3. The deceased died on 6.4.2006. His evidence is in respect of love between the deceased and A1 and his evidence of A1 killing the deceased is hearsay.

13. Evidence of P.W.12 - Doctor coupled with Ex.P14 - Postmortem Report and Ex.P15 - Final Report reveals that P.W.12 conducted postmortem examination over the dead body of the deceased and found no external injuries, but found the internal injury i.e., bruises of neck muscles. The Doctor is of the opinion that deceased would appear to have died due to asphyxia due to pressure on neck. He deposed in his cross-examination that hyoid bone is intact and neck muscles are blackish and discoloured and there were no external injuries over neck due to decomposition. Thus, oral evidence of P.W.12, coupled with Exs.P14 and P15, reveals that cause of death of deceased is established as due to pressure on neck.

14. P.W.5 deposed that in the year 2006, on the festival of Nookalamma, he saw the deceased with A1 on 1.4.2006 and on 5.4.2006 the villagers proceeded to the tank as there is a dead body. Accordingly, he went to that tank and identified her. He stated before police and M.R.O. that he saw that girl (deceased) with appellant on 1.4.2006 and he was present at the time of inquest.

15. P.W.8 deposed that deceased was her brother's daughter and she knew A1 and deceased used to study at Narsipatnam. A1 developed friendship and intimacy with her and used to come to house of the deceased every week. About 3 years back, A1 came to their village and took the deceased along with him. Deceased informed her that she is going to Kalyana Lova to her sister's house. A1 was also present along with her when she informed the same and

she did not come back. After five days, she came to know that one female died at Gyrammapeta village and then she went to the scene of offence and identified the dead body as that of the deceased. As A1 brought the deceased from their village, she has doubt against A1 regarding the death of the deceased.

16. The evidence of P.W.9 - R.I. is that A1 confessed his guilt before C.I. hence, it is hit by Section 27 of the Indian Evidence Act. A3's confession about the screening of dead body of the deceased along with A1 is also hit by the Section 27 of the Indian Evidence Act, however, leading to the recovery of M.O.4 - crowbar, M.O.5 - spade in furtherance of Ex.P6 - extra judicial confession, is admissible and so also Ex.P7 seizurenama. More over, the evidence of P.W.9 - R.I., coupled with Ex.P7, further reveals that in furtherance of confession of A1, he lead to his house and handed over M.O.6 - handbag and M.Os.7 and 8 - rold gold rings and M.O.9 - RTC cat card and M.O.10 - spare punjabi dress of the deceased. Accordingly, the said articles were seized.

17. P.W.11 has deposed that three years back, after death of the deceased, appellant came to arrack shop and disclosed before him that he committed an offence, however, did not disclose about committing the murder of deceased. After two days when he came to know that a dead body was buried at a pit at tank area, he doubted upon A1 that he killed the deceased.

18. The present case rests on the circumstantial evidence. There is no direct evidence to connect the accused with the death of the deceased. None of the prosecution witnesses deposed any specific overt act or any circumstances to connect the A2 and A3 with charged offence under Section 302 read with Section 34 I.P.C. or 201 I.P.C. Therefore, the trial Court acquitted A2 and A3 from all the charges.

19. So far as the charges framed against the appellant-A1 are for the offence punishable under Sections 302 and 201 I.P.C. Except extra judicial confession in the presence of police and recovery of crowbar and spade, nothing was proved against the appellant for the charged offence under Section 201 I.P.C. that appellant concealed the dead body of the deceased in the pit after committing the offence to screen that evidence. The trial Court did not believe the story of the prosecution in respect of offence under Section 201 I.P.C.

20. So far as the charge under Section 302 I.P.C. against the appellant is concerned, the prosecution successfully proved the charge based upon the evidence of P.W.2 who has proved the motive of A1 for commission of offence. So also evidence of P.W.8 who is paternal aunt of deceased, is that A1 developed friendship and intimacy with the deceased and used to come to the house of the deceased every week. Other circumstances, through the evidence of P.W.8 would reveal that 3 years back appellant came to their village and took the deceased along with him, however, the deceased did not come back and after five days, she came to know the death of the deceased.

21. Though evidence of P.W.3 reveals that he saw the deceased with A1, however, his evidence does not reveal when he saw the deceased with A1 and hence his evidence to that extent is no way helpful to the prosecution. Other circumstances proved by the prosecution through P.W.5 is that he saw that girl (deceased) with the appellant on 1.4.2006 and on 5.1.2006, they found the dead body of deceased. Though the extra judicial confession made by A1 before P.W.9 - mediator while interrogated by the Investigating Officer is inadmissible, however, in furtherance of that extra judicial confession, A1 led them to his house and handed over M.O.6 - bag, M.Os.7 and 8 - rold gold rings and M.O.9 - R.T.C. cat card of deceased and M.O.10 - spare punjabi dress under Ex.P7. Evidence of P.W.9 and P.W.16 - Investigating Officer coupled with Ex.P6 - admissible portion in mediator's report and Ex.P7 mediator's report would prove the same.

22. As proved by the prosecution, the motive of the appellant for commission of offence is love affair between the deceased and himself and the prosecution further proved that A1 took the deceased from her village. Thus, company of appellant with the deceased on 1.4.2006 soon before her death; locating dead body of deceased on 5.4.2006; time of death of deceased in between 4 to 7 days prior to 7.4.2006 as per the postmortem report proved the crime against the appellant.

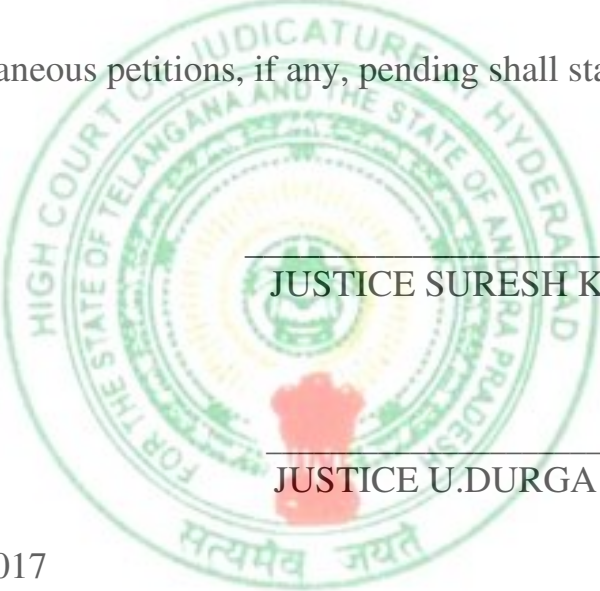
23. Considering the aforesaid evidence and material on record, the trial Court convicted the appellant for the offence punishable under

Section 302 I.P.C. We find no illegality and perversity in the judgment and order passed by the trial Court.

24. We find no merit in the appeal. We hereby confirm the judgment, dated 30.7.2010 passed by the trial Court, whereby the appellant is sentenced to life imprisonment for the offence punishable under Section 302 I.P.C.

25. Criminal Appeal is accordingly dismissed. No order as to costs.

26. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE SURESH KUMAR KAIT

JUSTICE U.DURGA PRASAD RAO

22nd March, 2017

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