

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.911 of 2017

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) This appeal is filed by the State against the acquittal of the respondents for the offences punishable under Sections 304-B and 302 IPC in S.C.No.260 of 2012 on the file of the Special Sessions judge for Fasttracking the Cases relating to the atrocities against Woman at Nalgonda. The respondents herein were charged under Sections 304-B and 302 IPC, for causing death of one Renuka (hereinafter referred to as "the deceased") by beating her with a pestle and thereafter hanged her to the hook of the house with a saree to show that the deceased herself committed suicide.

2) The facts in brief are as under:

i) PW.1 is the father, PW.2 is the mother, PW.3 is the brother and PW.4 is the sister of the deceased. PWs.5 to 8 and 10 are neighbours of the deceased. The accused No.1 is the husband of the deceased. His marriage with the deceased took place about three years prior to the date of incident. Out of wedlock they blessed with one daughter by name Meenakshi. It is said that both of them lived happily for about two years and thereafter disputes arose between them, as accused No.1 got addicted to alcohol and started harassing the deceased both mentally and physically for additional dowry with the instigation of accused Nos.5 to 7. The

deceased informed the same to PWs.1 and 2. On the demand made by accused No.1, PW.1 gave an amount of Rs.10,000/- to accused No.1 to purchase the agricultural land, but there was no change in the attitude of the accused and they continued to harass the deceased for additional dowry. About twenty days prior to the date of incident, accused No.1 quarreled with the deceased for her failure in bringing additional dowry and burnt her cloths. Later the deceased went to her parents house at Rajavaram, informed them the said incident and started staying there. Ten days prior to the date of incident, accused No.1 went there, convinced PWs.1 and 2 and brought back the deceased along with him to Chepur Village. Later on 30.12.2009 morning accused No.1 picked up a quarrel with the deceased alleging that she failed to bring additional dowry. The deceased left the house to go to her parents, but she unable to go, as the buses were not plying due to Telangana Bundh. Accused No.1 took the deceased with him to his house, quarreled with her, beat her with a pestle on her head and caused her instantaneous death. Subsequently, accused Nos.1, 5 to 7 tied a saree around the neck of the deceased and hanged her in the house to create a scene as if the deceased committed suicide. In the evening, PW.5 went to the house of the accused and found the deceased hanging with a saree in the front room and informed the same to PWs.1 and 2 and others.

ii) On receiving the said information, PW.1 along with his family members and some of the villagers rushed to Chepur village in the mid night and saw the dead body of the deceased hanged

with a sree to the ceiling hook. After laying down the dead body, he noticed an injury on the left side of the parietal region. Hence, he lodged a report to the police, who were already present at the scene of offence. Ex.P1 is the report. Basing on the said report, PW.14-the investigating officer, registered a case in Crime No.218 of 2009 and issued the first information report, which was marked as Ex.P12. PW.17- the inspector of police took up further investigation. He, proceeded to the house of the accused, examined the scene of offence and also conducted inquest over the dead body of the deceased in the presence of PW.15. Ex.P6 is the inquest panchanama. He also conducted scene of offence panchanama and rough sketch in the presence of PWs.11 and 12. Ex.P.14 is the scene of offence panchanama and Ex.P15 is the rough sketch. Then, he forwarded the dead body to the hospital, for postmortem examination. PW.13-the doctor, conducted autopsy over the dead body of the deceased and issued Ex.P10, the postmortem examination report. During postmortem, the doctor found that there was no cerebral hemorrhage, but noticed a ligature mark around the neck with knot on the right TM joint to behind right ear and there was fracture of left anterior horn of hyoid bone. According to the doctor, the cause of death was “due to hanging”. After collecting all the material, PW18-the Inspector of Police, filed the charge sheet which was taken on file as P.R.C. which on committal came to be numbered as S.C.No.260 of 2012.

- 3) Charges under Sections 304-B and 302 IPC were framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.
- 4) In support of their case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P15 and M.Os.1 and 2. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on their behalf, in support of their defence.
- 5) Since the prosecution failed to establish its case against the accused beyond reasonable doubt, the Sessions Judge, acquitted the accused/respondents for the offences with which they are charged. Challenging the same, the State preferred the present appeal.
- 6) The learned Public Prosecutor submits that the evidence of PWs.1 to 3 clearly show that the accused No.1 got addicted to alcohol and used to harass the deceased both physically and mentally at the instigation of other accused and on the demand made by accused No.1, PW.1 gave an amount of Rs.10,000/- to him. Since the death was occurred when she was in the custody of the accused, the burden lies on him to explain as to how the deceased died. In the absence of any explanation, the findings of the Sessions Judge warrant interference.

7) Learned counsel for the respondents would submit that PWs.2 and 3 admitted in their evidence that the dead body of the deceased was hanged in the house of one Venkataiah. As the prosecution failed to examine the said Venkataiah, to explain as to why the dead body was found in his house the accused cannot be fastened with any liability.

8) It is an admitted fact that there are no eye witnesses to the incident and the entire case rests on the circumstantial evidence. PWs.2 and 3 categorically admitted that the dead body was hanged in the house of one Venkataiah (brother of A1). PW.2 in her cross-examination admits that the said Venkataiah is the son of her younger sister. PW.2 in her evidence further stated that one Ch.Venkataiah, who is their close relative had gone to the house of the deceased in the afternoon and had lunch with them. Hence, said Ch.Venkataiah is the best person to explain the circumstances, but for reasons best known, the prosecution failed to examine said Venkataiah. The non-examination of the crucial witness is fatal to the case of the prosecution.

9) The evidence of PW.4 shows that the accused has rendered financial assistance to them at the time of marriage alliance of her daughter Saritha. The dead body of the deceased was seen hanging in the house of the brother of the accused and not in the house of accused No.1. It is to be noted that the owner of the said house, where the dead body was hanged was not made as accused nor cited as a witness. This shows the lacuna of the prosecution. The

evidence of PW.1 shows that he has given complaint to the police at the scene, as they were very much present even before he reaching the spot. Whereas, PW.14 stated that they do not have any information with regard to the incident until they received complaint from PW.1 at the police station on the next day of the incident at about 02.00 p.m. PW.13 in his evidence stated that the death was occurred between 18.00 and 22.00 prior to postmortem examination. The case of the material witnesses is that they have reached the spot in the mid night, but the FIR has been lodged on the next day at about 2.00 p.m and the delay for the said period was not at all explained by the prosecution.

10) PWs.5 to 8, 10, who were examined by the prosecution to prove that the accused beat the deceased with a pestle and hanged her to a ceiling hook to create that it was as suicidal death, have not supported the case of prosecution and they were treated as hostile. Though PWs.5 to 8 and 10 were cross-examined by the Public Prosecutor, nothing useful was elicited in their cross-examination to prove the case of the prosecution.

11) PWs.11 and 12, who are the panch witnesses to the scene of offence and seizure of MOs.1 and 2, saree and pestle, have also not supported the seizure. Though they were cross-examined by the Public Prosecutor, nothing incriminating was elicited against the accused.

12) Apart from that, PW.13-the doctor, who conducted autopsy over the dead body of the deceased, opined that the except a

oblique ligature mark with knot, there are no other external injuries over limbs to show that it was a suicidal hanging. Admittedly, the dead body was lying in the house of one Venkataiah.

13) It is to be noted that except the evidence of interested witnesses, no other evidence is available on record to show that the accused harassed the deceased for want of dowry. PW.17-the investigating officer in his evidence deposed that the body of the deceased was shifted to the hospital even before his arrival. This shows that the prosecution did not take proper interest in investigating the case.

14) For the aforesaid reasons, we are of the considered view that there are no compelling reasons to come to a different conclusion to reverse the acquittal order passed by the Sessions Judge. Hence, the order of acquittal passed by the Sessions Judge cannot be interfered with.

15) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

08.11.2017
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