

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE MS JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.31 of 2011

Date:17.07.2017

Between:

Pondurthy Venkata Bhairavan Sharma

..... Appellant

And

State of Telangana,
represented by Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mrs.C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



JUDGMENT: (per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This case involves killing of a woman with an advanced pregnancy of nine months.

2 The appellant, who was accused No.1 in Sessions Case No.181 of 2006 on the file of the Court of learned VI Additional District and Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, allegedly throttled his wife (hereinafter referred to as 'the deceased') to death and in order to create a scene of suicide by burns, he along with his parents burnt her dead body. While the appellant was charged for the offence punishable under Section 302 I.P.C., his parents and his sister, who were arraigned as accused Nos.2 to 4 respectively, were charged for the offence punishable under Section 201 I.P.C. However, by the judgment under appeal, accused Nos.2 to 4 were acquitted of the offence under Section 201 I.P.C. and the appellant was convicted for the offence under Section 302 I.P.C. and sentenced to suffer imprisonment for life apart from imposition of fine of Rs.1,000/-, in default, to suffer simple imprisonment for four months.

3. The case of the prosecution, in brief, is as follows:

The marriage of the deceased was performed with the appellant on 28.11.2003 at Kamareddy; that at the time of marriage, cash of Rs.1,75,000/-, one Yamaha motor cycle and some household articles were given as dowry; that after the marriage, the couple lead happy marital life for one year and were blessed with a male child; that subsequently, the appellant started demanding additional dowry of Rs.75,000/-; that on 06.09.2005, on the invitation of the appellant, P.Ws.1 to 3 – the father and the brothers of the deceased respectively, attended the birthday

function of his son; that after the birthday function, all the accused questioned P.Ws.1 and 3 as to why they did not get additional dowry of Rs.75,000/-, beat them and necked out P.W.1 from their house; that P.W.1 went to the house of P.W.5 - his relative, and slept over there on that night; that as the deceased was weeping, the appellant took her inside their house and they both slept in their bedroom; that P.Ws. 2 and 3 and accused Nos.2 to 4 slept in another room; that on the next day morning, the deceased was found dead near the well with burn injuries; and that on seeing the same, P.W.2 informed it to P.W.1, who, in turn, rushed to the scene and thereafter, lodged Ex.P-1 report. That on 07.09.2005, at about 9.00 a.m., on receiving Ex.P-1 report from P.W.1, P.W.16 - the then Sub-Inspector of Police, Bhiknoor, registered a case in Crime No.109 of 2005 under Sections 302, 304-B and 201 read with Section 34 I.P.C., sent copies of the F.I.R. to all the concerned and that the subsequent investigation was taken over by his superior officer – L.W.23 - Mr.MD.Sallemuddin – the then Sub-Divisional Police Officer, Kamareddy. That on 07.09.2005, at about 11.00 a.m., on receiving requisition, P.W.14 – the then Mandal Revenue Officer, Bhiknoor, visited the scene of offence, conducted panchnama of the scene of offence, during which, he seized M.Os.1 to 9 under Ex.P-10 – panchanama and held inquest over the dead body of the deceased in the presence of P.Ws.8 and 11 and drafted Ex.P-2 - inquest panchanama. That on receiving requisition, P.W-15 – the Civil Assistant Surgeon, Area Hospital, held autopsy over the dead body of the deceased and opined that the cause of the death was asphyxia due to throttling and there were post mortem burns all over the body of the deceased and issued Ex.P-13 - post-mortem examination report. That on 22.09.2005, at the request of L.W.23, P.W.13, who was working as the Village Revenue Officer,

Pendurthy Village, Bhiknoor Mandal, visited the Police Station and in his presence, the appellant made confessional statement, which was marked as Ex.P-11. After completion of investigation, charge sheet was filed. Based on the charge sheet, the Court below framed charges against all the accused as referred to above.

4. As the plea of the accused was one of denial, they stood trial. On behalf of the prosecution, PWs.1 to 16 were examined, Exs.P-1 to P-14 were marked and M.Os.1 to 9 were produced. On behalf of the accused, Ex.D-1 - a portion in the statement of P.W.3 under Section 161 Cr.P.C. was marked. On appreciation of the oral and documentary evidence, the Court below has convicted the appellant and sentenced him for the charge under Section 302 I.P.C. as stated supra. However, it has acquitted accused Nos.2 to 4 of the charge under Section 201 I.P.C.

5. At the hearing, Mrs.C.Vasundhara Reddy, learned counsel for the appellant, has submitted that the prosecution has failed to prove that the appellant caused the death of the deceased. She has seriously doubted the correctness of the opinion of P.W.15 – the Doctor, who conducted autopsy over the dead body of the deceased and issued Ex.P-13 - post-mortem examination report opining that the death occurred due to throttling and that the burns were post mortem. She has further argued that the whole case of the prosecution sounds unnatural, in that, when a serious altercation has taken place between the appellant and the deceased, leading to the latter proceeding towards the well situated in the backyard of the house for committing suicide, P.Ws.2 and 3 would not have continued to sleep without being disturbed by such altercation. She has also submitted that if the deceased herself wanted to commit

suicide, the appellant, who allegedly killed her, would not have stopped her from committing such act and himself killed her.

6. The learned Public Prosecutor (TS) has sought to support the judgment of the Court below.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

8. As noted hereinbefore, it is the specific case of the prosecution that the birthday function of the son of the appellant was celebrated on 06.09.2005; that P.Ws.1 to 3 attended the said function; that from noon of that day, all the accused started abusing P.Ws.1 to 3 for their failure to bring additional dowry of Rs.75,000/-, which is being demanded by them for a long time; and that after completion of the birthday function, at about 20.00 hours on that day, all the accused beat P.Ws.1 to 3, using un-parliamentary language, forcibly drove P.W.1 out of their house by beating him with hands and threatened him that he should come to their house only after he fulfills their demand of additional dowry. That then, P.W.1 left the village and made halt at Kamareddy at his relative's house and on the next day i.e., 07.09.2005 at about 06.00 hours, P.W.1's son informed P.W.1 through phone that the deceased died with burn injuries near the well. It is the specific version of the prosecution that at about 03.00 a.m. on 6/7.09.2005, when P.Ws.2 and 3 were in deep sleep, the deceased, who was sleeping along with the appellant in a separate room, got up and questioned the appellant as to why he beat, abused and insulted her father (P.W.1) though the latter has expressed his inability to give the additional dowry and that she has left the bedroom saying that she is going to commit suicide by drowning into the well. That on hearing

her shouts, accused Nos.2 to 4 came to the appellant's bedroom and saw her while proceeding towards the well; that all of them chased and caught her; that on the instigation of accused Nos.2 to 4, the appellant throttled her to death and that in order to project the death as suicidal, accused Nos.2 to 4 poured kerosene over the dead body of the deceased and set it ablaze with an intention to cause disappearance of the evidence and mislead as to the cause of the death.

9. The evidence of P.Ws.1 to 4 as to their presence in the house of the appellant on 06.09.2005 and the altercation that has taken place between the appellant and P.W.1 leading to the assault of P.W.1 by the appellant is consistent and the defence could not elicit material contradictions in this regard. It has also come out in their evidence that while the appellant has taken the deceased into his room for sleeping over, P.Ws.2 and 3 have slept in a separate room along with accused Nos.2 to 4. There is no dispute about the fact that the dead body of the deceased was found near the well in the house of the accused in burnt condition. In such a situation, the death could have been possible either due to suicide or homicide. The defence has not put any specific suggestions to P.Ws.1 to 3 about the cause of the death. However, a suggestion was put to P.W.15 – the Doctor, that the deceased died due to burns impliedly suggesting that it is a case of suicide. Based on the evidence available on record, the Court has to first consider whether there is any possibility of suicide. In Ex.P-13 – post-mortem examination report, P.W.15 found the following injuries on the dead body of the deceased:

- 1) Burns involving whole body;
- 2) The tongue is protruded;

- 3) On opening the neck, blood clots were found around the hyoid bone and tracheal rings;
- 4) On opening the chest, blood clots are present over the sternum;
- 5) Blood clots are present in all chambers of the heart;
- 6) On opening the stomach, stomach was full un-digested food present measuring 150 to 200 grams;
- 7) On opening the uterus, 38 weeks of pregnancy with a male baby found dead; and
- 8) A scar of previous caesarean section found.

He also found that hyoid bone was intact and burns are post mortem. He opined that the cause of the death was asphyxia due to throttling. In his evidence P.W.15 reiterated that the burns all over the dead body of the deceased are post mortem and that the deceased might have died approximately 12 to 24 hours prior to the post mortem examination. In the cross-examination, he denied the suggestion that in case of throttling, there must be a fracture of hyoid bone. The witness volunteered that fracture of hyoid bone need not be present in cases of throttling deaths. He also denied the suggestion that the deceased died due to burns, while ascertaining that the burns were post mortem.

10. The learned counsel for the appellant has strenuously contended that in Ex.P-2 – inquest panchanama, the mediators have observed blisters over the dead body of the deceased and that this clearly shows that the burns were ante mortem as there was no possibility of formation of blisters on the body after death.

11. A careful perusal of cross-examination of P.W.15 shows that his opinion as to the burns being post mortem remained unchallenged.

The defence has not questioned P.W.15 on the alleged blisters over the dead body of the deceased. When the opinion of an expert given in his evidence remained unchallenged, it is not permissible for the defence to question his opinion later. Even with respect to the opinion of P.W.15 regarding throttling being the cause of the death, the defence has failed to cross-examine him. Though the expert's opinion is not conclusive and binding on the Court, unless his opinion is questioned in the cross-examination, there is no reason for the Court not to accept such opinion and come to a different opinion. Had it been the case of suicide, the possibility of throttling of the deceased would not have arisen. In the light of this discussion, we have no hesitation to hold that the prosecution was able to prove that the death was homicidal.

12. The next question that needs to be considered is whether the appellant caused the death?

13. It is an admitted fact that the appellant and the deceased were sleeping in their bedroom, while P.Ws.2 and 3 along with accused Nos. 2 to 4 were sleeping in another room. There is not much serious dispute as to the altercation that has taken place on the evening on 06.09.2005 during the birthday function of the son of the appellant and the deceased. When the death is homicidal and the appellant was with the deceased on the night of the occurrence in the same room, the burden lies on him under Section 106 of the Indian Evidence Act, 1872 to explain as to how the death has taken place. No doubt, accused Nos.2 and 3, if not accused No.4 whose presence was disputed by the defence, and P.Ws.2 and 3 were also present at the house. But, admittedly, they were sleeping in a separate room while the appellant was with the deceased in another

room. The defence failed to probablise the deceased having been killed by any one else. Though suggestions were put to P.Ws.1 to 3 that P.W.2 was against the deceased marrying the appellant, who suffered an accident before the marriage, and his (P.W.2) trying to squeeze the neck of the deceased during the birthday function, no concrete evidence was placed by the defence in this regard. Even if P.W.2 had some reservation about the deceased marrying the appellant against his will, it is not possible to assume that he would have gone to the extent of causing the death of his own sister nearly two years of her marriage. Such a suggestion was not even put to the witnesses by the defence. Even in his statement under Section 313 Cr.P.C., the appellant has not come out with any such plea. Therefore, in our opinion, except the appellant nobody-else would have been responsible for causing the death of the deceased.

14. The learned counsel for the appellant has strenuously urged that if the deceased had serious altercation with the appellant leading to her running towards the well, P.Ws.2 and 3, who were sleeping in another room, which is located nearer to the well, where the dead body of the deceased was found, would have definitely woken up and prevented the appellant from killing the deceased. In the charge sheet, it is stated that P.Ws.2 and 3 were in deep sleep. It is seen from the record that on the date of giving their evidence, they were aged 23 and 22 years respectively. Being young, it would have been quite possible for P.Ws. 2 and 3 to have been in deep sleep when all the events were occurring. In our opinion, by the mere fact of P.Ws.2 and 3 not getting woken up, we cannot throw out the case of the prosecution.

15. The learned counsel has alternatively submitted that assuming that the case of the prosecution to the extent of the appellant throttling the

deceased and causing her death is correct, it is not possible to believe that he throttled the deceased with an intention to kill her as even according to the prosecution, the deceased was going to the well in order to commit suicide. We find merit in this submission. If the appellant had the intention of doing away with the life of the deceased, he would not have stopped the latter from jumping into the well. Therefore, the intention on the part of the appellant to kill the deceased is clearly lacking. In order to know as to how the death occurred, we need to look into Ex.P-11 - confessional statement of the appellant. It is clearly narrated in this statement that the deceased woke up at 3.00 a.m. and questioned the appellant as to why he insulted her father and been harassing him for bringing additional dowry though he has no capacity to pay the same; that by raising alarm, she suddenly left the bedroom announcing that she is going to commit suicide by jumping into the well; that the appellant along with accused Nos.2 to 4, who were sleeping in another room and who came to the appellant, went near the well; and that when the deceased reached the room in which the well was situated, they all decided to kill her and thereupon, the appellant throttled the deceased. Since the prosecution is relying upon the confessional statement of the appellant, that part of the statement, which is inculpatory in nature, needs to be ignored. So read, it is evident from the confessional statement of the appellant that he tried to prevent the deceased from committing suicide, but at the same time, the appellant appeared to have been overcome by the sudden provocation due to the fact that the deceased was creating nuisance and in a fit of rage and on grave and sudden provocation, he appeared to have throttled the deceased without intention to kill, but with the knowledge that such throttling in ordinary course may cause her death. We are, therefore, of the opinion that the act committed

by the appellant constitutes culpable homicide not amounting to murder coming under Section 304 Part-II I.P.C. Having regard to these facts and circumstances of the case, the conviction of the appellant for the offence under Section 302 I.P.C. is converted into the one under Section 304 Part-II I.P.C. and the appellant is liable to be sentenced to ten years rigorous imprisonment instead of life imprisonment. Accordingly, the conviction and sentence of the appellant are altered as above.

16. In the result, the Criminal Appeal is partly allowed. The conviction imposed and sentence recorded against the appellant (accused No.1) in judgment, dated 23.12.2010, in Sessions Case No.181 of 2006, on the file of VI Additional District & Sessions Judge (Fast Track Court), Nizamabad at Kamareddy, for the offence punishable under Section 302 I.P.C. are modified to that for the offence punishable under Section 304 Part - II I.P.C. and the appellant is sentenced to suffer rigorous imprisonment for a period of ten years, instead of life imprisonment. We, however, confirm the fine amount imposed by the Court below. Since the appellant was released on bail on 21.11.2016 pending disposal of the criminal appeal, he shall surrender himself before the Jail Superintendent concerned forthwith for serving the balance sentence.

C.V.NAGARJUNA REDDY, J

J.UMA DEVI, J

17th July, 2017
GHN/DR