

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE T. AMARNATH GOUD

CrI.A.No. 941 of 2012

JUDGMENT:- (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred against the judgment dated 13.07.2012 delivered in S.C.No. 87 of 2010 by V Additional District and Sessions Judge, Tirupati whereby the appellant-A1 was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and pay fine of Rs.1000/-, in default, to suffer simple imprisonment for a period of three months. He is also found guilty of the offence punishable under Section 304-B IPC and accordingly convicted and sentenced to undergo rigorous imprisonment for a period of seven years and pay a fine of Rs.500/-, in default, to suffer simple imprisonment for a period of one month.

The learned counsel for the appellant – A1 has strenuously contended that either Ex.P6 – inquest report or Ex.P8 – Post-mortem certificate issued by PW10 or Ex.P9 – R.F.S.L. Report do not show that the deceased – Ruth sustained any injury on her body, therefore, the trial Court ought to have convicted the appellant of the offence punishable under Section 304-B IPC only, however it

erroneously convicted the appellant of the offence punishable under Section 302 IPC also.

PW1 is the father and PW3 is the sister of the deceased. PW2 is village elder and PWs.5 and 6 were doing coolie work. These witnesses deposed that the appellant was harassing the deceased by demanding her to bring additional dowry of Rs.50,000/- and a two-wheeler vehicle. Since the family members of the deceased could not meet the demand, the appellant-A1 killed the deceased by throttling. Even the prosecution case is that the deceased died due to poison and no one has deposed that the appellant used force while administering poison to the deceased. Neither the post-mortem report nor R.F.S.L. report states so, however the learned trial Court has convicted the appellant of the offence punishable under Section 302 IPC also.

It is not in dispute that the marriage between the appellant and the deceased was solemnized on 10.07.2006 and the deceased died on 18.06.2007 i.e. within two years of the marriage. The presumption is, if the wife died within seven years of her marriage under suspicious circumstances, such offence falls under Section 304-B IPC. In the present case, initially, charges were framed against A1 to A4. Since the role of A2 to A4 against the alleged offences could not be proved by the prosecution, A2 to A4 have been acquitted of the

charged offences. However, based on the same evidence, the appellant-A1 is not only convicted of the offence punishable under Section 304-B IPC but also under Section 302 IPC.

We have perused the evidence of PWs.1 to 16 and Ex.P8 – post-mortem report, Ex.P9 – R.F.S.L. report and Ex.P10 – final opinion issued by the doctor, however, could not find that the appellant used force to administer poison to the deceased. It is the case of the prosecution that A1 himself gave information to PW1 about serious health condition of the deceased, and accordingly, PW1 and his family members rushed to the scene of offence. Even though they deposed that there was ligature mark on the neck of the deceased, but this fact could not be proved either in the post-mortem or R.F.S.L. report.

Thus, since there is no evidence that the appellant killed the deceased, we hereby extend benefit of doubt to the appellant-A1 for the offence punishable under Section 302 IPC and accordingly, the appellant is acquitted of the offence under Section 302 IPC, however, we maintain the conviction and sentence imposed on the appellant by the trial Court for the offence punishable under Section 304-B IPC.

Since the appellant has been on bail in pursuance of the order dated 12.02.2018 passed by this Court, the appellant-A1 is directed to surrender before V Additional District and

Sessions Judge, Tirupati within one week from the date of receipt of a copy of this judgment who, in turn, shall send the appellant to the jail concerned.

In view of the above, the Criminal Appeal is partly allowed.

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

SURESH KUMAR KAIT, J

24.09.2018

T. AMARNATH GOUD, J

bcj

