

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal No.985 of 2011

Date: 23.07.2018

Between:

Shaik Abdul

... Appellant

and

The State of A.P.,
Through Station House Officer,
Uppal Police Station, Ranga Reddy District,
Hyderabad

...Respondent

Counsel for the appellant: Sri K.Gopal for Sri K.Rajsekhar

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal arises out of Judgment, dated 20.06.2011, in SC.No.252 of 2010, on the file of the IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad, whereby the appellant/accused No.1 was convicted and sentenced (i) to undergo Imprisonment for Life and to pay a fine of Rs.1,000/- for the offence punishable under Section 302 IPC, and in default of payment of fine, to suffer Simple Imprisonment for three months; (ii) to undergo Rigorous Imprisonment for three years for the offence punishable under Section 498-A IPC; and (iii) to undergo Rigorous Imprisonment for six months for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961.

The brief facts of the case of the Prosecution are as under:

That on 15-10-2008, at 2.00 p.m., PW.1 lodged a complaint at Utkoor Police Station, Mahaboobnagar, stating that she performed the marriage of her daughter- Reshma (hereinafter referred as 'the deceased') with the appellant eight months back; that at the time of the marriage, she gave an amount of Rs.50,000/-, 3 tulas of gold and household utensils worth Rs.10,000/- towards dowry; that after the marriage, the deceased led conjugal life with the appellant at Chilakanagar, Uppal; that she lived happily for two months; that

thereafter, the appellant and his parents (accused Nos.2 and 3 in the aforesaid Sessions Case) sent the deceased to her maternal home to bring money for construction of house at their native village; that due to poor economic condition, PW.1 could not arrange the money and sent her back; that on 15-10-2008, PW.1 was informed that the deceased died during the intervening night of 14/15th October, 2008; that the dead body of the deceased was brought to Aminpur Village on 15.10.2008 at 12.00 hours; that PW.1 went to Aminpur Village; that she noticed certain scratch marks and abrasions around the neck and back of the dead body of the deceased; and that she suspected the death of the deceased as homicidal.

Based on the said complaint, PW.12- Assistant Sub-Inspector of Police, Utkoor Police Station, Mahaboobnagar, registered a case in Crime No.42 of 2008 under Section 304 (B) IPC and sent a requisition to PW.10- Tahsildar, Utkoor Mandal, Mahabubnagar District, to conduct inquest over the dead body of the deceased; and that on receipt of the same, PW.10 examined PWs.1 and 2, conducted inquest over the dead body of the deceased in the presence of LW.6- Gudla Anjaiah and PW.6, and sent the dead body for Postmortem Examination to the Government Area Hospital, Narayanpet of Mahaboobnagar District. That LWs.13

and 14- Civil Assistant Surgeons of the Government Area Hospital, Narayanpet, Mahaboobnagar District, conducted autopsy over the dead body of the deceased, sent the viscera of the deceased to the Forensic Science Laboratory, Hyderabad, for expert opinion, and issued Postmortem Examination Report opining the cause of death of the deceased as 'Asphyxia due to throttling and second shock due to 6 x 5 cm subdural haematoma over right parietal-occipital region'.

That as the offence occurred in the limits of Uppal Police Station, PW.11 transferred the CD file to the said Police Station through the Commissioner of Police, Cyberabad.

That after receipt of the CD file, PW.13- Assistant Commissioner of Police, Malkajgiri, re-registered the case as Crime No.953 of 2008 under Section 304-B IPC, re-examined PWs.1 and 2, recorded the statements of PWs.1 to 5, visited the scene of offence, conducted the Scene of Offence Panchanama and drew the rough sketch of the scene of offence in the presence of PWs.7 and 8.

That during the course of further investigation, on 10-11-2008, PW.13 apprehended the appellant, recorded his confessional statement in the presence of PW.9 and LW.11- Janmala Charles,

took the appellant to the scene of offence, re-conducted the Crime Scene Panchanama in the presence of the said mediators, caused the arrest of the appellant and his parents (accused Nos.2 and 3) and produced them before the jurisdictional Magistrate, who remanded them to judicial custody.

That the investigation revealed that after marriage, the appellant and accused Nos.2 and 3 harassed the deceased both mentally and physically for additional dowry of Rs.50,000/-; that the deceased could not meet their demand; that the appellant also pledged the gold ornaments of the deceased during Ramzan festival; that quarrels ensued between the deceased on the one hand and the appellant and his parents on the other in this regard; that in order to send the deceased to her maternal home, on 14-10-2008 at 9.00 p.m., the appellant accompanied her to the bus stop; that when they reached the tank bund on their way to Nacharam, quarrel ensued between them, during which the appellant got angry and pressed her throat; that the deceased fell down; that the appellant informed the same to his parents, who initially brought the dead body of the deceased to their house and thereafter, took it to their native village- Aminpur by engaging a car; and that noticing the Police personnel thereat, the appellant and his parents fled away, stayed in the mosques for few days and returned.

Based on the charge sheet and the material produced before it, the Court below has framed the following charges:

“1. That you on or about 14-10-2008 being the husband of one Reshma subjected such woman to cruelty namely physical harassment for additional dowry and that you thereby committed an offence punishable u/s 498-A of IPC and within my cognizance.

2. That you on 14-10-2008 at about 9 PM committed murder intentionally (or knowingly) causing the death of your wife Reshma and thereby committed an offence punishable u/s. 302 of IPC and within my cognizance.

3. That you at the time of your marriage with the deceased Reshma took dowry from your in-laws, and that you thereby committed an offence punishable u/s. 3 of Dowry Prohibition Act and within my cognizance.

4. That you after your marriage with the said Reshma continuously demanded her to bring additional dowry from your in-laws, and that you thereby committed an offence punishable u/s. 4 of DP Act and within my cognizance.”

As the plea of the appellant was one of denial, he was subjected to trial, during which the Prosecution examined PWs.1 to 14 and got Exs.P.1 to P.12 marked. No evidence was let in on behalf of the appellant.

On appreciation of oral and documentary evidence, the lower Court has disposed of the case in the manner as noted herein before.

Heard Sri K.Gopal, learned Counsel representing Sri K.Rajsekhar, learned Counsel for the appellant, and the learned Public Prosecutor appearing for the respondent- State.

The learned Counsel for the appellant has submitted that the Medical Officers, who conducted autopsy over the dead body of the deceased, have not been examined in this case; that the evidence of PWs.1 to 8 cannot be taken into consideration as PWs.3, 7 and 8 have turned hostile; and that PWs.1, 2 and 4 to 6 are the interested witnesses. The learned Counsel further submitted that this case is based on circumstantial evidence; that the Prosecution has not produced the evidence to complete the links in the chain of circumstances; and that therefore, the appellant is entitled for acquittal.

Per contra, the learned Public Prosecutor appearing for the State of Telangana submitted that the death of the deceased being unnatural, Ex.P.12- Post Mortem Examination report, which clearly shows the cause of death of the deceased as 'Asphyxia due to throttling', cannot be rejected for mere non-examination of the Medical Officers, who conducted autopsy over the dead body of the deceased and issued Ex.P.12. He further submitted that though PWs.1, 2 and 4 to 6 are interested witnesses, their evidence can be taken into consideration insofar as it relates to the marriage

of the deceased and also the chain of circumstances leading to her death. Ultimately, he submitted that the Prosecution has proved the incriminating circumstances against the appellant and that therefore, the judgment under Appeal needs no interference.

In view of the above rival submissions, it is to be seen whether the deceased and the appellant were living together prior to the incident. PW.1 stated that she performed the marriage of the deceased with the appellant about three years prior to her giving evidence; that she gave Rs.50,000/- apart from gold and other articles to the appellant; that after the marriage, the deceased joined the appellant and lived happily for two to three months; that thereafter, the deceased demanded an additional dowry of Rs.50,000/- for construction of a new house in Aminpur; and that she expressed her helplessness, due to which the appellant harassed the deceased. In her cross-examination, PW.1 denied the suggestions that the deceased never joined the appellant for conjugal life; that she was staying at the maternal home; and that only two days prior to the incident, the deceased went to the house of the appellant.

PW.2- grandfather of the deceased, stated that the deceased approached him and requested to arrange money for construction of new house, but he could not arrange the same.

Though PW.3 turned hostile, in his chief examination, he stated that he knows the appellant; that the latter is his tenant; that the deceased was the wife of the appellant; and that the dead body of the deceased was shifted to their native place.

PW.4, who is an independent witness, stated that the appellant sent the deceased to her maternal house demanding additional dowry for construction of a new house at Aminpur; that as PW.1 could not arrange the same, the deceased left to her in-laws' house; and that ten to fifteen days thereafter, she died.

From the above evidence, it is quite clear that as on the date of the incident, the deceased and the appellant were living together as wife and husband in the house belonging to PW.3 in Chilkanagar, Uppal.

As regards the demand for additional dowry, though PWs.1, 2, 4 and 5 in one voice stated that the appellant demanded additional dowry, PWs.1 and 2 being interested witnesses and the evidence of PWs.4 and 5 being hearsay, their evidence on this aspect cannot be taken into consideration. The Prosecution failed to prove any specific instance with regard to harassment for additional dowry by the appellant. Hence, the findings of the trial

Court with regard to the offence under Section 498-A IPC are liable to be set aside.

Coming to the medical evidence, in Ex.P.12- Post Mortem Examination Report, the cause of death of the deceased is stated as 'Asphyxia due to throttling and secondary shock due to 6 x 5 cm subdural haemotoma over right parietal-occipital region'. Though the Medical Officers, who conducted autopsy over the dead body of the deceased and issued Ex.P.12 were not examined, the contents of Ex.P.12 regarding the injuries were corroborated by PWs.1, 2, 4 and 5. PW.1, in her chief-examination, stated that she found injuries all over the dead body of the deceased. She denied the suggestion that the deceased used to suffer from ill health such as fits (epilepsy) or stomach ache. PW.2 stated that he noticed injuries on the hands, neck and back of the dead body of the deceased. PWs.4 and 5, who are the independent witnesses, stated that they have accompanied PW.1, PW.2 and some others to Aminpur by engaging a jeep; that they too noticed injuries on the neck, both arms, stomach and back of the dead body of the deceased; and that on their arrival, the appellant escaped. However, these witnesses were not subjected to cross-examination on this aspect. Hence, non-examination of the Medical Officers is not fatal to the case of the Prosecution.

Section 106 of the Indian Evidence Act, 1872 (for short 'the Act'), reads as under:

“106. Burden of proving fact especially within knowledge.—
When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

In view of the above provision, as the death of the deceased was unnatural and the deceased and the appellant were living under one roof as on the date of the incident, the burden lies on the latter to explain as to how the former received injuries. The appellant did not offer any explanation for the same. PW.1, in her cross-examination, stated that the death intimation of the deceased was given by one of the friends of her husband to her husband, who, in turn, informed her. The appellant also failed to explain as to why he has not informed about the death of the deceased to her parents till he has taken the dead body to Aminpur Village, where he had never been to and where he had no relatives or any properties whatsoever, and as to why he was in a hurry to cremate the dead body there. The appellant has also not stated anything in his examination under Section 313 Cr.P.C. PWs.2, 4 and 5 have stated that after they reached Aminpur Village, the appellant and accused Nos.2 and 3 escaped therefrom by leaving the dead body. This conduct of the appellant clearly reveals his guilty intention to suppress the offence committed by him. Therefore, the appellant

failed to discharge the burden cast upon him by Section 106 of the Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharging the burden placed on him, the Court can consider the same as an additional link in the chain of circumstances proved against him.

For the foregoing reasons, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/accused in the Judgment, dated 20.06.2011, in Sessions Case No.252 of 2010, on the file of the learned IX Additional District and Sessions Judge, Rangareddy District at L.B.Nagar, (i) for the offence punishable under Section 498-A IPC is set aside; and (ii) for the offences punishable under Section 302 IPC and Section 4 of the Dowry Prohibition Act, 1961, are confirmed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 23rd July, 2018
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