

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Criminal Appeal Nos.592, 638 and 876 of 2011

DATED:13-07-2018

Criminal Appeal No.592 of 2011

Between:

Dhanwada Rajeswara Rao ... Appellant/Accused No.1

And

The State of Andhra Pradesh
through P.P., High Court, Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. Milind G. Gokhale
COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)

Criminal Appeal No.638 of 2011

Between:

Dhanwada Prabhakar Rao
and others ... Appellants/Accused Nos.2 to 4

And

The State of Andhra Pradesh
through P.P., High Court, Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. Milind G. Gokhale
COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)

Criminal Appeal No.876 of 2011

Between:

G.V. Subba Rao ... Appellant/De facto
complainant

And

Dhanwada Rajeswar Rao
and others ... Respondents

COUNSEL FOR THE APPELLANT: Mr. H. Prahlada Reddy
COUNSEL FOR RESPONDENT NOS.1 to 7: Mr. Milind G. Gokhale
COUNSEL FOR RESPONDENT NO.8: Public Prosecutor (TS)

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:

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

As these three appeals are interrelated, they are being heard and disposed of together.

2. The de facto complainant – P.W.1 filed Criminal Appeal No.876 of 2011 against the common judgment dt.26.05.2011 to the extent it pertains to Sessions Case No.48 of 2005, accused No.1 filed Criminal Appeal No.592 of 2011 against the same common judgment, qua Sessions Case No.530 of 2003, and accused Nos.2 to 4 filed Criminal Appeal No.638 of 2011 also against the said common judgment.

3. The case of the prosecution in Sessions Case No.530 of 2003 is briefly stated hereunder.

(a) That the marriage of one Sujatha (hereafter referred to as “the deceased”) was solemnized with accused No.1 on 17.05.1997 at Kurnool, that at the time of marriage P.W.1, the father of the deceased fulfilled the requirements as per the demand of accused Nos.1 to 4, that accused No.1 was working in the Office of the Director General and Inspector General of Jails, at Hyderabad, and that after the marriage the deceased joined with accused No.1 and resided at Kamalanagar in Vanasthalipuram. That accused No.1 is no other than the nephew of P.W.1, that the couple led a happy life for about

three years, and that as the deceased did not beget children the accused used to harass, ill-treat and humiliate her with an intention to perform another marriage to accused No.1. That the deceased used to express her sufferings to her parents, that P.W.1 advised accused No.1 to go for medical check up along with the deceased, but accused Nos.1 to 4 did not heed to the advice of P.W.1, and continued to harass and ill-treat the deceased, that the deceased was not even permitted to attend the phone calls, all of which caused humiliation to the deceased. That on 24.07.2002, the deceased sustained injuries and the injuries found on the person of the deceased proved that she was beaten up severely with the belt of accused No.1 and that consequent on the same, the deceased got humiliated, resorted to put an end to her life, and committed suicide by hanging with the help of a rope at their residence. That accused Nos.1 to 4 tried to give colour to the death of the deceased as if she committed suicide, tried to conceal the evidence and shifted her dead body to their native village Pedda Dhanwada of Mahaboobnagar District and also tried to complete the funeral of the deceased.

(b) That on 25.07.2002 at about 06.30 Hours P.W.1 lodged a complaint before P.W.13 – Sub-Inspector of Police, Rajoli

Police Station, Mahaboobnagar District, stating that on 24.07.2002 night at about 10.00 p.m. one Ramana Murthy of Hyderabad informed him through telephone that his daughter Sujatha (hereinafter referred to as “the deceased”) died and the dead body was being shifted to Pedda Dhanwada Village, and that he asked the said Ramana Murthy to keep the dead body there as they would go to bring the same. That P.W.1 expressed suspicion on the death of the deceased and requested to take necessary action.

(c) That as per the contents of the aforesaid complaint, P.W.13 registered the case in Crime No.11 of 2002, under Section 174 CrPC (suspicious death) and during the course of the investigation, he examined P.Ws.1, 2 and 8, and L.W.3 (B. Ramana Murthy) and L.W.5 (Ketharaju Swamy), recorded their statements and got photographed the dead body of the deceased by P.W.6. That P.W.7 – Mandal Revenue Officer, Waddepalli Mandal, held inquest over the dead body of the deceased and sent the same for post-mortem examination to the Government Civil Hospital, Alampur, where L.W.19 (Dr. K. Saroja Bai) – Deputy Civil Surgeon and P.W.12 – Civil Assistant Surgeon of the Hospital, held autopsy. The Medical Officers opined that the death of the deceased was “due to

asphyxia due to hanging” and on receipt of the opinion, P.W.13 altered the case from Section 174 Cr.P.C. to Section 306 IPC and subsequently he arrested accused No.1, recorded his confession and at his instance seized a belt, coir rope and a latch with screw from the scene of offence at Kamalanagar in Vanasthalipuram, in the presence of P.Ws.10 and 11. That P.W.13 has produced accused No.1 before the Judicial Magistrate of First Class at Alampur on 11.08.2002. That as the place of occurrence is at Kamalanagar in Vanasthalipuram, where accused No.1 and the deceased lived together, P.W.13 transferred the case diary file to P.W.14 - Sub-Inspector, Vanasthalipuram Police Station, who registered the case in Crime No.431 of 2002 under Section 306 IPC and carried on the investigation.

(d) During the course of further investigation, P.W.14 examined P.Ws.1 to 5, L.W.6 (K. Sudha Jyothi), L.W.8 (K. Ramasubbamma) and L.W.11 (A. Nagakumari), recorded their statements in detail and deposited the seized material objects in the Court. That accused Nos.2 to 4 surrendered before the Additional District and Sessions Judge, Ranga Reddy District on 08.10.2002 and as per the directions of the Court they were released on bail.

(e) That the evidence of the witnesses, the post-mortem examination findings and the circumstances that led to the death of the deceased clearly prove that accused Nos.1 to 4 committed the offences punishable under Sections 498-A, 306 and 201 IPC. P.W.14 accordingly filed the charge sheet.

4. Based on the charge sheet filed by the State and the material produced by it during the investigation, the Sessions Court framed the following issues.

“CHARGE 1

That you all the accused prior to 24.7.2002 you being husband and in-laws of Sujatha, caused such harassment to her viz., coerced her to meet the unlawful demand of money to wit to bring additional dowry from her parents and that you thereby committed an offence punishable u/s.498-A of I.P.C. and within my cognizance.

CHARGE 2

That you all the accused have beaten up the said Sujatha with the belt of A1 and consequent to the above the deceased humiliated and resorted to put an end to her (Sujatha) life and had committed suicide by hanging with the help of a rope at your residence and that you thereby committed an offence punishable U/s.306 of IPC and within my cognizance.

CHARGE 3

That you the accused on the same date as mentioned above tried to conceal the evidence, shifted the deceased dead body to your native village and tried to complete the funerals of the deceased and that you thereby committed an offence punishable U/s.201 of IPC and within my cognizance.”

5. As the State has not charged the accused for the offence under Section 302 IPC, P.W.1 has filed Criminal Miscellaneous Petition No.8 of 2004 with a request to frame charges under Sections 498-A, 302 and 201 IPC on 08.01.2004. It appears

that on 09.03.2004 the lower Court has dismissed the said petition. Thereafter, on 10.05.2004 P.W.1 has filed a private complaint before the jurisdictional Magistrate against accused Nos.1 to 7 (accused Nos.5 to 7 who were not arraigned in Sessions Case No.530 of 2003 were added). The jurisdictional Magistrate has recorded the statements of the witnesses and taken cognizance of the case in P.R.C. No.9 of 2005 which after committal was numbered as S.C. No.48 of 2005. The Court has framed the following charges:

“That you on or about 24.7.02 at about 8.30 p.m. at Plot No.16, Kamalanagar, Vanasthalipuram did commit murder by intentionally/knowingly causing the death of Sujatha by beating mercilessly and hanged to death and that you thereby committed an offence punishable under Sec. 302 IPC and within my cognizance.

Secondly, that you at the said date, time and place stated supra, knowing/having reason to believe that certain offence punishable with imprisonment for life has been committed, did cause certain evidence of the said offence to disappear to wit, took Sujatha to Kamineni hospital stating that she developed chest pain and collapsed, with the intention of screening the said offence from legal punishment and thereby committed an offence punishable under Sec. 201 of IPC and within my cognizance.”

As the plea of the accused was one of denial, they stood trial. A common trial was conducted in both the Sessions Cases during which the prosecution examined P.Ws.1 to 14, got marked Exs.P.1 to P.36 and produced M.Os.1 to 3. On behalf of the defence D.W.1 was examined. On appreciation of the oral and documentary evidence, the Sessions Court convicted

accused Nos.1 to 4 in Sessions Case No.530 of 2003 for the offences under Sections 306, 498-A and 201 IPC and acquitted all the accused in Sessions Case No.48 of 2005 for the offences under Sections 302 and 201 IPC. The aggrieved parties have filed the aforementioned appeals as noted hereinbefore. For convenience, the parties are hereinafter referred to as the State, de facto complainant and the accused in all the appeals respectively.

6. Mr. H. Prahlada Reddy, learned counsel for the de facto complainant, submitted that the Court below has committed an error in acquitting the accused of the charge for the offence punishable under Section 302 IPC when there was clear evidence of the accused causing the death of the deceased. He further submitted that the following facts would clearly prove that it is a case of homicidal death. (i) That the death was unnatural; (ii) that the death has taken place in the joint house of accused Nos.1 to 4; (iii) that the deceased was harassed by accused Nos.1 to 4 prior to her death; (iv) that the accused have hurriedly shifted the body of the deceased to Pedda Dhanwada despite the request of P.W.1 to keep the body at Hyderabad till he arrived there; (v) that the brothers of accused No.2 hastily made arrangements for cremation of the dead body in order to

hide the real cause of the death, and (vi) that the extensive injuries on the body of the deceased clearly prove that she was tortured to death. The learned Public Prosecutor (TS) supported the submissions of the learned counsel for the de facto complainant.

7. Opposing the submissions of the learned counsel for the de facto complainant and the Public Prosecutor, Mr. Milind G. Gokhale, learned counsel for the accused, submitted that there was no eyewitness to the occurrence, that P.W.8, who only had the personal knowledge of the events that have taken place at the house of accused No.1 and the deceased, was treated hostile, that even if her deposition is taken into consideration it would reveal that the deceased has bolted the bedroom doors from inside and that on accused No.1 and one Chakali Raju came to the house, after P.W.8 has arrived at 5.30 p.m., they broke open the doors and noticed the deceased hanging to the ceiling fan. He relied upon the judgment of the Supreme Court in **C. Muniappan v. State of Tamil Nadu**¹ in support of his submission that the evidence of a hostile witness can be relied upon by both the prosecution as well as the defence, depending upon the side which the witness supports. He has further

¹ (2010) 9 SCC 567

argued that the injuries found on the body of the deceased, i.e., on the back of the chest, abrasion over back of right elbow, contusions over dorsum of right hand, and left hand and fingers, and contusions over left leg upper part, left knee joint, lower part of right thigh, right leg upper part, and right side of abdomen, might have been caused, as the body was kept on the floor of the Matador Van and travelled a distance of about 350 Kms. from Hyderabad to Pedda Dhanwada. The learned counsel further submitted that as admitted by P.W.12 that when time passes, in a dead body rigour mortis will be present and will pass away and putrefication will commence and that after putrefication commences the body becomes livid (Dark colour and bluish in tinge). The learned counsel has taken the Court through the evidence of P.W.12 who spoke about the causes for the body becoming livid and submitted that the purported injuries on the body were a natural process, as explained by Dr. K.S. Narayana Reddy in his book 'Medical Jurisprudence and Toxicology', that it is not safe to conclude that the contusions were the result of the injuries caused by the accused and that the abrasions might have been caused when the body was taken in a van for a distance of 350 Kms. The learned counsel further submitted that howsoever strong the

suspicion may be, it cannot take the place of proof, unless the prosecution adduces the evidence on which the Court comes to the conclusion that the accused must have committed the offence. To fortify his submission he has relied upon the judgment of the Supreme Court in **Vikramjit Singh v. State of Punjab**². The learned counsel also submitted that the scope of the appeal against acquittal is very narrow and that unless the findings of the lower Court are perverse or that the view taken by the Court is not a possible view, the appellate Court cannot interfere with the judgment of the lower Court. To buttress his submission, the learned counsel has relied upon the judgment in **Perla Somasekhara Reddy v. State of A.P.**³.

8. As regards the appeals of the accused, the learned counsel argued that for convicting a person under Section 201 IPC, there must be causing of disappearance of evidence and that in the instant case the prosecution failed to prove any such act on the part of the accused. The learned counsel further submitted that the offence of abetment has to be read with Section 301 IPC, that the accused are not liable for the offence under Section 306 IPC unless the ingredients of Section 109 IPC are satisfied and that in the instant case the prosecution has failed

² (2006) 12 SCC 306

³ (2009) 16 SCC 98

to produce evidence to attract Section 109 IPC. He relied upon the judgments in **Mahendra Singh v. State of M.P.**⁴, **Gangula Mohan Reddy v. State of Andhra Pradesh**⁵ **Gurucharan Singh v. State of Punjab**⁶ **Namdeo Dashrath Shinde v. State of Maharashtra**⁷.

9. The learned Public Prosecutor submitted that though the accused have not succeeded in causing disappearance of the body by removing the body from the place of occurrence, the accused have caused disappearance of the crucial evidence of the body position, and the setting surrounding the body without informing the Police and that therefore the prosecution succeeded in proving the ingredients of Section 201 IPC.

10. We have carefully considered the respective submissions of the learned counsel appearing for the parties with reference to the record. We propose to first consider the charges for the offences punishable under Sections 498-A and 302 IPC. Section 498-A IPC reads as under.

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

⁴ 1995 Supp (3) SCC 731

⁵ AIR 2010 SC 327

⁶ AIR 2017 SC 74

⁷ 2007 Cri LJ 3147

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

As could be seen from the language of Section 498-A IPC, as reproduced above, cruelty is explained in two parts. Under the first part, any wilful conduct of such nature which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman, falls under the provision. In the second part, harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, comes under this part of the provision. Thus, Section 498A of IPC relates not only to harassment for dowry but also to harassment unrelated to dowry.

11. In the charge sheet the prosecution specifically alleged that the deceased was harassed due to the reason that she did not beget children. P.W.1 in his cross-examination admitted that the accused never demanded dowry during his marital life

with the deceased. Therefore, this case falls under part-1 - non-dowry harassment.

12. P.W.1 – father of the deceased in his chief examination has reiterated the contents of the charge sheet on the cause for harassment. Though P.W.1 has denied the suggestion that the accused have never harassed the deceased, P.W.14 – Investigation Officer admitted in his cross-examination that P.W.1 did not state before him that when the deceased visited his house on 1.3.2002 in connection with the death of her mother, she has informed her sister and her paternal aunt that the accused have been harassing the deceased. P.Ws.2 and 3, sisters of the deceased, P.W.4 – sister of P.W.1, i.e, paternal aunt of the deceased, and P.W.5 – husband of P.W.4 also sought to corroborate the evidence of P.W.1 as regards the harassment. Except the parrot like repetition of the allegation of harassment, none of these witnesses have given specific instances of such harassment. No independent witness was examined to speak about the alleged harassment. It is also not the version of P.W.1 that he made any effort to prevent such harassment, such as requesting the elders to intervene and mediate or approaching the Police for taking action for the alleged harassment. In order to hold a person guilty for an

offence, the prosecution needs to produce the evidence of such quality which does not raise any reasonable doubt. Mere examination of a number of witnesses for the purpose of corroboration with each other's testimony, would not prove the allegation, as, more than quantity, it is the quality of the evidence which is relevant. The testimony of a solitary witness even in the absence of corroboration can be relied upon if it is of such a quality as the Court can safely rely upon it. [See **Sunil Kumar v. State (Govt. of NCT of Delhi**⁸), **Namdeo v. State of Maharashtra**⁹ and **Kunju v. State of Tamil Nadu**¹⁰]. If we carefully scan through the evidence of the above-mentioned witnesses, we are not left with any doubt that it completely lacks quality with regard to the harassment of the deceased. Therefore, in our opinion, the lower Court has got itself swayed away by the testimony of the above mentioned prosecution witnesses without properly examining its quality.

13. As far as the offence under Section 302 IPC is concerned, as noted hereinbefore, the State has treated the cause of death as suicide and charged the accused for the offence under Section 306 IPC. Though the charge sheet was filed as far back as 27.11.2002, charges were framed by the Court on 24.05.2004.

⁸ (2003) 11 SCC 367

⁹ (2007) 14 SCC 150

¹⁰ (2008) 2 SCC 151

On the private complaint filed by the de facto complainant the case was taken cognizance for the offence under Section 302 IPC.

14. Admittedly the occurrence has taken place in the bedroom of the house in which accused No.1 and the deceased were living. P.W.1 and the material prosecution witnesses stated that accused Nos.1 to 3 lived together in Kamalanagar, Vanasthalipuram. P.W.8, the only circumstantial witness examined by the prosecution who had personal knowledge about the occurrence, deposed that she is a maid servant in the house of accused No.1. She further stated that during the last six years she has not noticed any disputes between the deceased and accused No.1, that on the date of the occurrence she went to the house of accused No.1 and the deceased at about 5.30 p.m., that after entering the house, as there was nobody, she knocked the bedroom doors of the deceased, but they were not opened and that meanwhile one Chakali Raju and accused No.1 arrived and as the doors were not opened, accused No.1 broke open the same and found the deceased hanging to the ceiling fan. P.W.8 was treated as hostile and the Additional Public Prosecutor cross-examined her. She denied the suggestion that during the course of her working in the house of accused No.1,

the latter used to abuse, ill-treat and beat the deceased. She denied having given the statement to the Police as in Ex.P.23, which reads as under:

“Every day I used to work from 7-30 AM to 7-30 PM by washing utensils and clothes. On Wednesday (24.07.2002) at 8-30 a.m., I heard quarrels of Rajeshwar Rao with his wife Sujatha and he beat her. When I questioned, Rajeshwar Rao left the house to attend duty.”

It is apt to note that no suggestion was put to the witness that any of the accused was present at the house at the time of occurrence. Even if we believe that the witness has spoken as per Ex.P.23, it does not prove that accused No.1 was present at the house when the witness went for work. On the contrary, it shows that after allegedly beating the deceased at 8.30 a.m., accused No.1 left the house to attend his duty. Indeed, her deposition before the Court as to the events that have occurred at 7.30 p.m. are in conformity with her statement given before the Police under Section 161 CrPC. The only variation between the said statement and her evidence before the Court is the alleged quarrel taking place in the morning, and accused No.1 beating the deceased before leaving for his office. The prosecution failed to produce evidence of any other witness to prove the presence of any of the accused at the time of death of the deceased.

15. As regards the cause of death, P.W.12 opined that the same is due to asphyxia due to hanging. She has, however, not specifically opined whether the death is suicide or homicide. When the medical evidence does not suggest that the death could be homicide, without there being any evidence, either direct or circumstantial, it would be presumptive for the Court to hold that the cause of death could be homicide, but not suicide. As noted hereinbefore, the prosecution has not propounded the last seen theory and has not examined any witness to prove that at the time of death any of the accused was present in the house so as to press into service Section 106 of the Indian Evidence Act.

16. As regards the emphasis laid by the learned counsel for the de facto complainant on the suspicious manner in which the accused tried to shift the body and conduct funeral, no doubt the conduct of the accused raises a serious suspicion. Indeed, the theory that they have taken the deceased to two hospitals has not been established by them. Therefore, the manner in which the accused have acted in showing undue haste in removing the body and trying to complete the funeral as early as possible, made this Court deeply contemplate on the entire evidence in order to find whether there is any

corroborative legal evidence on which it could be safely concluded that the accused are guilty of commission of offence under Section 302 IPC, but, to our disappointment, we could find no such evidence.

17. In **Rajiv Singh v. State of Bihar and others**¹¹, the Supreme Court held as under:

"Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."

The aforesaid view has been followed by this Court in a number of judgments including the one in **Mallepally Sridhar vs. State of Andhra Pradesh**¹².

¹¹ 2015 (13) Scale 901

¹² 2016 (3) ALT (Crl.) 75 (DB)

18. Coming to the injuries on various parts of the body of the deceased as enumerated in Ex.P.31 – post-mortem certificate and as spoken to by P.W.12 – Doctor, at the first blush they create an impression that the injuries might have been caused by someone. P.W.12 in his evidence agreed with the opinion of Dr. K.S. Narayana Reddy expressed in his book ‘Medical Jurisprudence and Toxicology’, that post-mortem hypostasis is caused by the stoppage of circulation, the stagnation of blood in blood vessels, and vessels of the dependent parts of the body, that filling of these vessels produces a bluish-purple colour to the adjacent skin, that upper portions of the body drained of blood are pale, that the intensity of the colour depends upon the amount of reduced hemoglobin in the blood, that in cases of large amount of reduced hemoglobin before death, the blood has deep purplish-red colour and that the colour of the hypostasis may vary from area to area in the same body. As regards the small bruises, he agreed with the view of Dr. K. S. Narayana Reddy, in the aforementioned book, as under:

“Appreciable bruising does not occur 2 minutes after death due to arrest of circulation, but by using great violence, small bruises can be produced upto 3 hours after death, in areas where the tissues can be forcibly compressed against bone and also in hypostatic area, e.g., the back of the scalp, if the body is dropped on the ground, or on trolleys or post-

mortem tables. The margins of post-mortem bruises are usually quite sharply defined, and those of ante-mortem bruises are less sharp or indistinct for the greater part, indicating vital reaction in the damaged tissues. Sometimes, haemorrhages are seen in areas of lividity on the arms or shoulders of fat persons without evidence of trauma on other parts of the body. The haemorrhages are produced by tearing of small veins in the skin when the body is lifted from the scene of death. At autopsy blood drains from blood vessels so that the deep bruises may show up against the white areas as the blood in the contusions will not drain.”

He further agreed as under:

“Bruises are of less value than abrasions because: (1) Their size may not correspond to the size of the weapon. (2) They may become visible several hours or even one or two days after the injury. (3) They may appear away from the actual site of injury. (4) They do not indicate the direction in which the force was applied ... Accidental bruises are very common and may be seen on prominences, such as the forehead, nose, elbows and knees. Presence of mud, sand, grease or oil gives an idea of the manner of causation. Multiple contusions from minor trauma are often seen in alcoholics, which may be mistaken to be caused by physical violence. Self-inflicted bruises are rare, as they are painful. They are seen over accessible areas usually on the head, especially in a hysterical individual or the insane. Homicidal bruises may be seen on any part of the body. It is not possible to differentiate an injury caused by a fist or weapon and a fall. Contamination of the wound should be looked for. Tangential forces or glancing blows may tear large flaps of tissue, exposing the underlying skull.”

He also agreed with the view of Dr. K.S. Narayana Reddy in his book, on the following aspects.

“Contusions and abrasions produced immediately before death show a marked decrease in the acidic mucopolysaccharides of the connective tissue ground substance as demonstrated by Alcian Blue or dialized iron technique. Acidic Mucopolysaccharide is absent in contusions more than an hour old, but reappears in the bruises several days old showing the increase of connective tissue. On microscopic examination, the presence of tissue

reaction of a degree beyond a margination and limited emigration of the white cells indicates that the contusion was probably ante mortem. If the red cells have lost their shape and staining characteristics, and if iron containing pigment is found either at the site of injury or in the regional lymph nodes, probably 12 hours have passed after the injury. It is of some value in distinguishing cerebral haemorrhage occurring due to accident from natural haemorrhage, which could have been occurring for some time, and which may have caused the accident.”

The witness also opined that the bruises can occur on dependent areas of the body which was pressed by hard objects, that if the dead body is placed on the floor of the Matador Van, bruises may occur on the back of the body and that if there are knockings around the body, the possibility of occurring of bruises is possible.

19. When the prosecution has not elicited firm opinion from P.W.12 that contusions and bruises found on the body of the deceased were on account of the accused causing injuries, his abovementioned admissions in the cross-examination would create a reasonable doubt in the mind of the Court that those contusions and bruises might have occurred for the reasons pleaded by the defence and not on account of the injuries caused by the accused.

20. The Courts held that in a case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the

fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law and secondly, that the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. In **Perla Somasekhara Reddy** (3 supra), the Supreme Court has traced the history of the case law on the point starting from **Prasad v. State**¹³, referred to the judgments in **Surajpal Singh v. State**¹⁴, **Ajmer Singh v. State of Punjab**¹⁵, **Atley v. State of U.P.**¹⁶, **Aher Raja Khima v. State of Saurashtra**¹⁷, **Sanwant Singh v. State of Rajasthan**¹⁸, **M.G. Agarwal v. State of Maharashtra**¹⁹, **Shivaji Sahabrao Bobade v. State of Maharashtra**²⁰, **K. Gopal Reddy v. State of A.P.**²¹ and a host of other subsequent judgments, and culled out the following general principles as regards the powers of the appellate court while dealing with an appeal against an order of acquittal.

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

¹³ AIR 1954 SC 36

¹⁴ 1952 CrL LJ 331

¹⁵ 1953 CrL LJ 521

¹⁶ 1955 CrL LJ 1653

¹⁷ 1956 CrL LJ 426

¹⁸ 1961 CrL LJ 766

¹⁹ [1963] 2 SCR 405

²⁰ 1973 CrL LJ 1783

²¹ 1980 CrL LJ 812

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An Appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court.”

21. Applying the settled legal principles to the facts of the case and the evidence on record as discussed above, we are of the view that the view taken by the trial Court being a possible view, the same cannot be substituted with any other possible

view with respect to the acquittal of the accused for the offence under Section 302 IPC.

22. Adverting to Criminal Appeal No.592 of 2011 filed by accused No.1 and Criminal Appeal No.638 of 2011 filed by accused Nos.2 to 4, all of them have been convicted for the offences under Sections 306, 498A and 201 IPC. We have already discussed in detail, the charge for the offence under Section 498A IPC and concluded that the prosecution failed to prove the said charge. Once the charge under Section 498A fails, charge under Section 306 IPC cannot stand, as to constitute an offence under the said provision, the prosecution has to satisfy the ingredients of the explanation to Section 109 IPC. Section 109 IPC along with its explanation reads as under:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

In order to prove abetment, the prosecution has to allege and prove that the deceased has committed suicide as a

consequence of the instigation or in pursuance of the conspiracy, or aid which constitutes the abetment. Except the alleged harassment, no witness spoke about the accused instigating the deceased or entering into any conspiracy, or aiding the deceased to commit suicide. Consequently, the Court below fell into a serious error in holding the appellants guilty of the offence under Section 306 IPC and accordingly sentencing them.

23. The last aspect that remains to be considered is the conviction and sentence for the offence under Section 201 IPC. Section 201 IPC applies in a case where an offence is held proved and any person causing disappearance of the evidence of such offence or giving false information to any other person to screen the offender. Therefore, the commission of offence and its proof are *sine qua non* for punishing a person for the offence under Section 201 IPC. In the light of the findings rendered hereinbefore that the prosecution failed to prove the commission of any of the offences with which the accused have been charged, their conviction under Section 201 IPC cannot be sustained.

24. In the result, Criminal No.876 of 2011 is dismissed and Criminal Appeal Nos.592 and 638 of 2011 are allowed. The

convictions and sentences imposed against the accused are set aside. Consequently, the appellants/accused Nos.1 to 4 are acquitted of all the charges framed against them. The fine amount, if any, paid by them shall be refunded to them.

As the accused are on bail, they shall surrender themselves before the Superintendent, Central Prison, Cherlapally, for completing the legal formalities for their release. The bail bonds furnished by them shall stand cancelled.



C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

13-07-2018

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