

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SMT. JUSTICE T.RAJANI

CRIMINAL APPEAL No.682 of 2013

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

This appeal is by the accused. He stands convicted for offence found to be punishable under Section 302 of the Indian Penal Code, and is sentenced to undergo imprisonment for life and to pay fine of Rs.200/- and, in default of payment of fine, to undergo simple imprisonment for three months.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor.

3. The case of the prosecution is as follows:

About 20 years before the date of incident, the accused married P.W.4's daughter, hereinafter referred to as 'the victim'; the couple had three children of whom PW1 and PW2 are the daughters and LW3 is the son; the accused, who sold bananas from rickshaw, was in the habit of consuming liquor and used to quarrel with the victim, thereby torturing her physically and mentally; that the accused suspected the fidelity of his wife, the victim, and doubted that she had illicit relationship with her maternal uncle – PW8. On 03.01.2011, there was an incident that led to lodgment of an FIR for offence punishable under Section 498-A of the Indian Penal Code in the backdrop of the fact that the wife of the accused had consumed poison. On 11.08.2011 i.e., the date on which the occurrence which is the

matter of this criminal case allegedly occurred, the accused argued with his wife at the time of dinner and after meals, they slept in a cot, while their children - PW1, PW2 and LW3, slept in the same room; at about 12.30 in the night, the accused hacked his wife with an axe and caused severe head injuries, her right temple, on the right side of the head and caused further injuries on the right side of the frontal region, right cheek and right side of the jaw. The prosecution case is that PW1 and PW2 raised cries and the accused fled away from the scene of occurrence with the axe and the torchlight. PW1, PW2, their brother – LW3, and their neighbours, including PW9, informed the same; following which, 108 Ambulance was brought; the victim was shifted to hospital; and, she succumbed to injuries on the way to the hospital. The investigation concluded charging the accused of having murdered his wife by intentionally causing her death with a dangerous weapon and having motive to kill her.

4. The Court below heard the evidence of the different witnesses, including PW1 and PW2, who are the daughters of the accused and the victim, as also PW9 and other witnesses, including the witnesses to seizure. The trial Court also heard the evidence of the doctor who conducted autopsy, and considered the documentary evidence on record, which included the Postmortem Report and the FIR in the earlier case which was for the offence punishable under Section 498-A of the Indian Penal Code following the so-called consumption of

pesticide by the victim. Different other documentary evidence placed on record by the prosecution was also proved in accordance with law and admitted in evidence.

5. The Court of Session believed the version of PW1 and PW2, who are the children. The other evidence on record was found to be corroborating and sufficient enough to convict the accused having murdered his wife. The sentence of life imprisonment and fine with the default sentence of simple imprisonment was handed down. This is in appeal.

6. Learned counsel appearing for the appellant as well as the learned Public Prosecutor took us copiously through the evidence on record and addressed arguments on different aspects arising for decision in this appeal.

7. The identity of the victim and that she suffered homicidal death is established by the Postmortem Report, corroborated by the doctor, who conducted the autopsy. Such evidence coupled with the oral evidence of the eye witnesses, which is trustworthy, would show the use of deadly weapon resulting in the death of the victim.

8. PW1 and PW2 are two daughters of the accused and the victim. They were, respectively, 18 and 16 years of age when they testified before the Court on 13.08.2012 relating to the incident which allegedly occurred on 11.08.2011. Nothing is brought out in the cross examination to discredit the testimony

of those two daughters of the accused or to show that they nurtured any animosity as against their father, the accused. The evidence of PW1 to the effect that the earlier incident in which the mother was shown to have consumed pesticide was administered by the accused, is impeached before us by the learned counsel for the appellant pointing out that Ex.P7 – statement of the deceased Hymavathi, which led to registration of the earlier FIR, did not contain any accusation against the accused of having forcibly fed her with pesticide (poison). When we assimilate the evidence of PW2 in the context of the contents of Ex.P7 – FIR along with the statement of the victim and the wound certificate in relation to the earlier incident, those materials are not by themselves of any value to challenge the credibility of the dependable testimony of PW1 and PW2, who are the daughters of the accused as well as the victim. We also do not see that the non-examination of the son is of any consequence, when the testimony of PW1 and PW2 corroborate each other on all material particulars and their evidence stands credible and has not been shaken. As already noted, the testimony of those daughters of the accused is not even challenged as motivated against him with any ground which could be charged against those daughters who were testifying as witnesses against their father of having killed their mother.

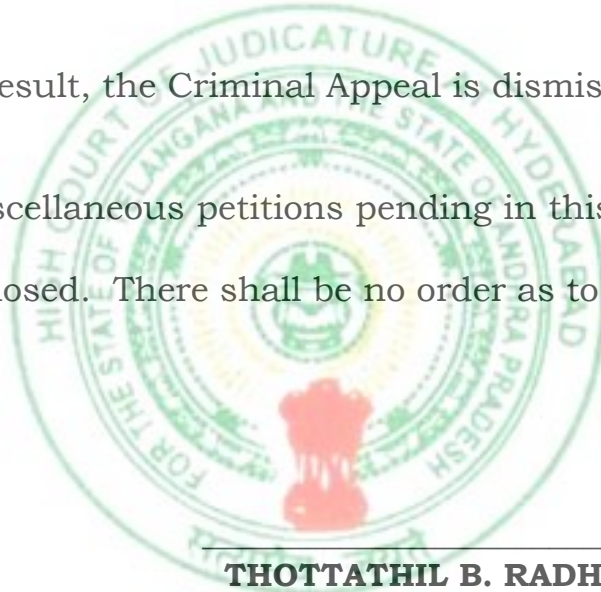
9. PW3 is the brother of the deceased. His evidence also corroborates the version of PW1 and PW2. Taking his evidence along with the testimony of PW1 and PW2, we see that the

harassment and cruelty meted out to the deceased by the accused in the matrimonial home is well established.

10. The aforesaid fact situation which emanate out of the legal evidence on record leads to the inevitable conclusion that the Court of Session was justified in arriving at the findings it had. The finding that the accused is guilty of offence punishable under Section 302 of the Indian Penal Code stands. We do not find any ground to interfere with it. The sentence also, therefore stands. This Criminal Appeal, therefore, fails.

11. In the result, the Criminal Appeal is dismissed.

The miscellaneous petitions pending in this Appeal, if any, shall stand closed. There shall be no order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

T.RAJANI, J

28.12.2018
vs/pln