

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

Crl.A.No.493 of 2012

Between:

Dollu Venkataramana
S/o. Ramamurthy

... Appellant

And

The State of A.P.,
rep., by the Public Prosecutor,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 28-08-2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals

Yes/No

3. Whether Your Lordships wish to
see the fair copy of the Judgment?

Yes/No

C.V. NAGARJUNA REDDY, J

T. AMARNATH GOUD, J

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

and

The Hon'ble Sri Justice T.Amarnath Goud

+Criminal Appeal No.493 of 2012

% 28.08.2018

#Dollu Venkataramana,
S/o Ramamurthy

.....Appellant

Vs.

\$The State of A.P,
rep., by the Public Prosecutor,
Hyderabad.

.....Respondent

!Counsel for the appellant: Mr. Ch. Vidyasagar Rao
for Mr. T.Dayananda Rao

^Counsel for the respondent: Public Prosecutor (AP)

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>HEAD NOTE:

? CASES REFERRED:

1. AIR 2014 SC 1256 = 2014(4) SCC 9
2. AIR 2012 SC 1357 = 2012(4) SCC 257
3. AIR 2013 SC 912 = 2012 (10) SCC 464
4. AIR 2013 SC 3150 = 2013 (5) SCC 722
5. 2006 (10) SCC 681
6. 2013 (8) SCC 60
7. 2001 (8) SCC 311
8. AIR 1998 Supreme Court 1

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 for Mr. T.Dayananda Rao**

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

Strange are the ways of destiny! The appellant, who was presented with the chance of getting away with a lighter punishment of Imprisonment for two years for the offence under Section 306 IPC, dug his own grave by filing an appeal and suffered conviction for the offence punishable under Section 302 IPC and sentence for Imprisonment of Life for killing his pregnant wife.

The case of the Prosecution, in brief, is stated hereunder:

One Dollu Eswaramma (hereinafter referred to as 'the deceased'), who is the daughter of P.Ws.6 and 7, married the deceased on 13.04.2001 at Parvathipuram Rural Police Station against the will of their respective parents. After the marriage, the couple left Parvathipuram Village to Eluru to eke out their livelihood by doing coolie work. During the wedlock, the deceased became pregnant. The appellant developed an evil idea of remarriage for the purpose of dowry. He along with the deceased came down to Vizianagaram on 08.08.2001, stayed in Room No.2 of

Simhadri Lodge and with an evil intention to end the life of the deceased, shifted to 'Subhodhaya lodge' on 09.08.2001 with false names and address. He made the deceased believe that they shall end their lives as they could not get proper livelihood. In continuation of his plan, the appellant purchased five tablets of Inderol each from PWs.11 and 12 on 09.08.2001 and administered them to the deceased. As the said tablets did not cause effective sleep and while the deceased was in an unconscious state, the appellant tied a saree around her neck and hanged her to the ceiling fan, due to which she died. PW.2- room boy, while cleaning the lodge, pushed the doors of the said room and saw the appellant tying the saree to the fan and also to the neck of the deceased. As the appellant threatened PW.2 with dire consequences, if he reveals the same to others, the latter remained silent. Thereafter, the appellant locked the said room and went away. P.W-4- painter, who was engaged to paint Room No.104, found the said room locked and informed the same to PW.3 by suspecting something. Later, the lock of the said room was broke open by PWs.2 and 4, who found the dead body of

the deceased hung to the ceiling fan with a saree. P.W-5- occupant of Room No.103 and P.W-1- the owner of the lodge also witnessed the same. On 10.08.2001, PW.1 gave a report to PW.21- Sub-Inspector of Police, II Town Police Station, Vizianagaram, who registered the same as Crime No.89 of 2001 under Section.174 Cr.P.C.

During the investigation, PW.21 proceeded to the scene of offence, recorded the statements of P.Ws.1 to 5 and L.W-5-Himandu Apparao, observed the scene of offence in the presence of PW.14 and LW.17- Kanakala Sankara Prasad, seized MOs.1 to 3, held inquest over the dead body of the deceased in the presence of PW.14 and LWs.17 to 20, sent the same for Post-mortem examination to PW.15 and got the scene of offence photographed through PW.10. PW.15, who conducted autopsy over the dead body of the deceased, found a ligature mark around the neck of the deceased and hyoid bone fracture and opined that the deceased died of ante-mortem hanging. Later, PW.21 altered the provision of Law and sent the express FIRs to all the Officers concerned.

PW.22- Inspector of Police, Vizianagaram, took up the investigation from PW.21, re-examined PWs.2, 3 and 7, recorded their statements, arrested the appellant on 03.09.2001 at 10.30 am., near Tea-stall at Railway Station, Vizianagaram. The appellant confessed the guilt in the presence of PW.16 and LW.22- Meesala Suri Ramulu, and he was sent to judicial custody. During the Test Identification Parade, PW.2 identified the appellant. After completion of the investigation, receipt of RFSL report and collection of the relevant material, the charge sheet was filed.

Based on the chargesheet and the material collected by the Investigating Officer, the lower Court has framed the following charges:

“That you accused married Dollu Dwaramma (deceased) daughter of Padham Somunaidu of Vikramapuram Village on 13-4-2001 at Parvathipuram Police Station, as the parents of the deceased did not agree for the said marriage, that the said Eswaramma was pregnant during the wedlock, that subsequently you accused developed an evil idea of re-marriage for the purpose of dowry, by putting an end to the life of Eswaramma ;

That on 8-8-2001 both of you came down to Vizianagaram and lodged in Room No.2 of Simhadri Lodge, Vizianagaram, and again shifted to Room No.104 of Subodhaya lodge on 9-8-2001 under false names and address as “Srinivasarao and Gowri” of Sidagam village ; that you made Eswaramma to believe that both of you should end your lives as you could not get livelihood properly ;

That in furtherance of your intention to put an end to the life of Eswaramma, you accused purchased five tablets of Indrol from Surampalli Anjayeyulu and Vulli Mukundarao at Vizianagaram, and administered them to the your wife Eswaramma; that as the tablets did to cause sleeping effectively, and while your wife was in unconscious state, you accused tied a saree to the ceiling fan and to the her neck and hanged her upto her death, and as a result of which your wife Eswaramma died ;

Thereby you accused did commit murder of your wife Eswaramma, with the intention of causing her death, or with the knowledge that the act done by you is sufficient in the ordinary course of nature to cause death of a normal humanbeing, and that you accused thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

As the appellant pleaded innocence, he was subjected to trial, during which the Prosecution examined PWs.1 to 22, got Exs.P.1 to P.40 marked and produced MOs.1 to 6.

On behalf of the defence, no oral evidence was let in. However, it has got Ex.D.1 marked.

By Judgment under Appeal, the trial Court, while holding the appellant not guilty of the offence punishable under Section 302 IPC, however, found him guilty of the offence punishable under Section 306 IPC and accordingly, convicted him for the said offence and sentenced to undergo Rigorous Imprisonment for a period of 2 years and also to pay a fine of Rs.10/- with default provision. As divine justice would have it, the appellant, instead of accepting the said punishment, filed Crl.A.No.1347 of 2002 before this Court. This Court, by its Judgment, dated 23.02.2007, set aside the conviction for the offence under Section 306 IPC and remitted the case to the lower Court for fresh adjudication. After remand, no fresh evidence was let in by either party. On reconsideration of the oral and documentary evidence, the Court below has found the appellant guilty of the offence punishable under Section 302 IPC and sentenced him to undergo Imprisonment for Life besides payment of fine of Rs.1,000/- and, in default of payment of fine, to suffer Simple Imprisonment for six

months. Feeling aggrieved by this Judgment, the appellant has filed this Appeal.

The Prosecution projected PW.2 as the eye witness. At the outset, we would like to observe that though on 09.08.2001, he allegedly, saw the appellant putting on (chunni) around the neck of the deceased and tightening and informed the same to PW.3, but, neither of them have informed the same to anybody or taken any follow-up action. The falsity of the case of the Prosecution to the extent of terming PW.2 as an eye witness is exposed by the contents of Ex.P.1 report given by PW.1 to the Police on 10-08-2001. In the said report, PW.1 did not refer either to what PW.2, allegedly, noticed through the window of the room on 09.08.2001 or his informing PW.3 about the same. On the contrary, PW.1 has stated that on 10.08.2001 at 10.30 a.m., as room No.104, in which the appellant and the deceased were staying, was locked and the key was not handed over to the management, PW.4, thinking that the party had vacated the room without handing over the key, broke open the lock and found the deceased hanging to the fan in the room. Once we hold

that PW.2 is not an eye witness, the character of the case changes into the one based on circumstantial evidence.

There is no dispute about the fact that the appellant and the deceased had occupied room No.104 of Subodaya lodge in Vizianagaram Town at around 8.30 a.m., on 09.08.2001. The body was found hanging to the ceiling fan at about 10.30 a.m., on 10-08-2001. Autopsy on the dead body of the deceased was held on 11.08-2001 from 12.15 p.m., by PW.15- Civil Assistant Surgeon. He issued Ex.P.19- Post-mortem Certificate opining that the time of death was more than 48 hours prior to the Post-mortem examination. It would, thus, appear that the death had taken place anywhere between 8.30 a.m. and 12.00 noon on 09-08-2001. It is not in dispute that the death is unnatural. In Ex.P.21- final opinion on Post-mortem examination, the cause of death was shown as 'anti-mortem hanging'. PW.15 confirmed the said opinion in his evidence. He has also deposed that the ligature mark mentioned in Ex.P.19- Post-mortem Certificate is possible by hanging a person with an object like MO.6.

The learned Counsel for the appellant submitted that there is no specific evidence to the effect that the appellant has hanged the deceased and that suicide by hanging could not be ruled out.

Interestingly, when PW.15 has specifically stated that the ligature mark mentioned in Ex.P.19 is possible by hanging a person with an object like MO.6, he was not subjected to cross-examination on this aspect. In Ex.P.19, the presence of ligature mark around the neck starting from below left ear between chin and thyroid cartilage around the mandible and behind the neck ending below left ear was noted. In a case of suicide by hanging, there would be no possibility of ligature mark behind the neck. Such a possibility would arise only if an object like MO.6 is tightened around the neck. Further, in Column No.7 of Ex.P.18- Inquest report, it is clearly mentioned that on the left upper portion of the neck, the saree knot was found and on the right neck portion, ligature mark was clearly visible. This observation corroborates with the medical evidence discussed above. The most important observation recorded in the said column of Ex.P.18 is that

both the feet were found almost touching the floor. In a case of suicide by hanging, there is bound to be some gap between the feet and the ground, lest the person struggling for life would instinctively press the feet on ground. The above incriminating aspects rule out the possibility of death by hanging.

Added to the above, the appellant has not set up the plea that the death was not homicidal, but it was due to hanging. The incriminating features discussed above, in the absence of even a suggestion put forth to any of the Prosecution Witnesses that the deceased committed suicide by hanging herself, leave us in no doubt that this is a case of homicide.

The further question is, whether the appellant has killed the deceased ?

As per the evidence of PW.9- Manager of Simhadri lodge, the appellant along with the deceased came to their lodge on 08-08-2001, entered their names in Ex.P.10-register maintained by the lodge and on 09.08.2001, at about 6.00 a.m., the appellant took the deceased outside

the lodge and that on the following day *i.e.*, on 10-08-2001, he was informed by PW.8- another manager of the lodge that PW.1 alone came back and vacated the room at 6.30 a.m., on that day. Except suggesting that he was deposing false, no specific suggestion was put to PW.9 that the appellant and the deceased have not stayed in Simhadri lodge from the morning of 08-08-2001 till the morning of 09-08-2001. PW.3- Manager of Subhodaya lodge deposed that on 09.08.2001, the appellant came to their lodge along with the deceased; and that he entered the name of the appellant in the register and allotted room No.104. The witness identified the appellant among a group of persons present in the Court as the one who occupied the said room. He had also identified the signature of the appellant at the relevant column in Ex.P.4- register. PW.4- painter deposed that in pursuance of the work of painting entrusted to him, he started the work on 03-08-2001 onwards; that on 10-08-2001, he came to the lodge at around 10-30 a.m., and noticed that room No.104 was locked; that he informed the said fact to the Manager; and that thereafter, the lock was broken open upon which they

saw the dead body hanging to the fan. The statement of this witness under Section 164 Cr.P.C., was recorded by the Magistrate and marked as Ex.P.6. The suggestion put to this witness that the room was bolted from inside and that they did not break open the lock was denied. PW.6-mother of the deceased deposed that about 11 months back, the appellant visited her house and informed that her daughter died at Madras; that again, he stated that she died at Vijayawada; that after some time, he stated that she died in Subhodaya lodge at Vizianagaram; and that the appellant further informed her that he administered sleeping pills and killed the deceased as his parents did not like the marriage. PW.6 further stated that herself and PW.7 went to Parvathipuram Police Station; that on their advise, they went to Komarada Police Station and gave a report; and that on the direction given by the Vizianagaram Police, herself and PW.7 handed over the appellant to the Parvathipuram Police. Though there appears to be some unexplained gap of time as regards the alleged custody of the appellant and the arrest shown to have been made on 03-09-2001, in our opinion, the same may not be of much

significance, for the reason that the appellant has not set up the defence that he did not stay with the deceased at Subhodaya lodge. It is also not his case that apart from himself and the deceased, any other person has either stayed in the lodge or visited the same. Interestingly, the appellant has not even pleaded *alibi* either through the suggestions put to the Prosecution witnesses or in his examination under Section 313 Cr.P.C.

The learned Counsel for the appellant submitted that as per the statement recorded under Ex.P.31- Identification report by PW.20- Judicial First Class Magistrate, who held the Test Identification Parade, the appellant has set up the plea of suicide. We are afraid we cannot accept this submission. Law does not require the Magistrate to record the statement of the suspect regarding the cause of death or his defence. The limited aspect on which a Magistrate holding the Test Identification Parade is expected to examine the suspect is as to whether he was shown by the Police to the identifying witnesses. Therefore, any statement that was recorded by PW.20 as regards the manner in which the offence, allegedly, took

place cannot be treated as evidence. In any event, the appellant did not pursue that line of defence during trial or in his examination under Section 313 Cr.P.C.

Though all the incriminating features such as his staying along with the deceased in room No.104 of Subhodaya lodge, the door being locked from outside, the lock being broken open and the body found hanging were put to him during his Section 313 Cr.P.C., examination, the appellant has not come out with any specific explanation regarding those incriminating features or set up any specific defence such as *alibi*. He gave one standard answer to every question by saying that he has not committed the offence. Though the appellant has a right to be silent, from his failure to deny the incriminating features by setting up specific defence, the Court can draw adverse inference (see **Phula Singh vs. State of Himachal Pradesh**¹, **Ram Naresh Vs. State of Chattisgarh**², **Munish Mubar vs. State of Haryana**³ and

¹ AIR 2014 SC 1256 = 2014(4) SCC 9

² AIR 2012 SC 1357 = 2012(4) SCC 257

³ AIR 2013 SC 912 = 2012 (10) SCC 464

Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan⁴).

When the appellant has not disputed the case of the Prosecution that he took the deceased to Subhodaya lodge and stayed with her in room No.104, the burden lies on him to explain the cause of death of the deceased under Section 106 of the Indian Evidence Act, 1872. (See **Trimukh Maroti Kirkan vs. State of Maharashtra⁵, Babu and Ors. Vs. The State of Tamil Nadu⁶ and Ram Gulam Chaudhury vs. State of Bihar⁷**).

By maintaining absolute silence in this regard, the appellant failed to discharge the said burden. As already held, the nature of death of the deceased was homicidal and therefore, the inevitable conclusion that could be drawn is that the appellant, being in the company of the deceased and having failed to explain the incriminating circumstances, was responsible for killing his wife, which also resulted in his committing the offence of foeticide.

⁴ AIR 2013 SC 3150 = 2013 (5) SCC 722

⁵ 2006 (10) SCC 681

⁶ 2013 (8) SCC 60

⁷ 2001 (8) SCC 311

The learned Counsel for the appellant placed heavy reliance on the Judgment of the Supreme Court in **R.Rajendran Nair vs. State of Kerala**⁸. In the said case, it was the specific case of the Prosecution that around 8.00 p.m., the accused therein slapped his wife on her face and kicked on her chest and immediately thereafter, he along with his daughter went to his parents' house but returned alone, that between 8.15 and 8.30 p.m., the hanging took place inside the house and that at that time, there was none except the appellant. The Supreme Court, however, declined to accept the plea of the Prosecution based on Section 106 of the Indian Evidence Act, 1872, by holding that the Prosecution failed to let in the evidence to show that by the time, the accused returned, the deceased was found alive. Thus, the said Judgment turned on its own facts, which bear no similarity with the facts of the present case.

On the analysis as above, we have no hesitation to hold that the appellant has caused the death of his wife and the Court below has rightly convicted him for the offence

⁸ AIR 1998 Supreme Court 1

punishable under Section 302 IPC and sentenced him to undergo Life Imprisonment. Therefore, we do not find any reason to interfere with the judgment of the trial Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 28th August, 2018

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