

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.808 OF 2012

JUDGMENT:(per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The appellant, Kaviti Mohana Rao, has challenged the legality of the judgment, dated 25.7.2012, passed by the II Additional District and Sessions Judge, Fast Track Court, Srikakulam, whereby the learned Judge has convicted the appellant for offences under Sections 498-A and 302 IPC, and acquitted for the offence under Section 404 IPC. The learned Judge has sentenced the appellant for three years of imprisonment, and to pay a fine of Rs.5,000/-, and in default thereof, to suffer a simple imprisonment for three months for offence under Section 498-A IPC. He has further sentenced the appellant to life imprisonment, and imposed a fine of Rs.5,000/- and further directed the appellant to undergo simple imprisonment for three months, in default thereof. Both the sentences were directed to run concurrently.

Briefly the facts of the case are that on 24.11.2009, Thammineni Srinivasa Rao (PW. 1) submitted a report, (Ex. P. 1), to the Sub-Inspector of Police, Police Station, Ponduru, Srikakulam District. In the report, he claimed that *"on the night of 23/24-11-2009 my elder sister, Lalitha Kumari, wife of Kaviti Mohan Rao, found dead in Venus Dabha Hotel due to injuries and twisting her neck, details of her death.*

The deceased is my own elder sister. Her marriage was performed in the temple in Palajogipeta in Srikakulam District, with

Kaviti Mohan Rao, twelve years back. After marriage, they lived together at Sompeta. While they were living at Seethapeta, her husband used to ill-treat her by beating and torturing mentally. Due to the troubles between them, we made them to live together at Ponduru by opening a cloth shop at Ponduru. Yet, he is demanding his wife to bring money and also suspecting her character, torturing mentally and beat her. She narrated everything to us. I bequeathed one acre of land in her favour in my village, hoping that they live happily. Yet, he used to spend money lavishly and spending without having work, demanding his wife always to bring money from her parents house and also used to torture by mentally and bodily. My other two sisters also helped her a lot by giving money to my sister, Lalitha Kumari. Yet he used to beat my sister Lalitha Kumari twice or thrice. The matter was brought to the notice of the elders, but he did not heed the elders. We did not report this matter to the notice of police due to the fear that our prestige will become low in the public and used to settle the matter before elders. My sister-in-law and brother-in-law have two sons. On 24.11.2009 I received a phone call that my sister is dead at hotel at Ponduru. I rushed to Ponduru and saw that my sister Lalitha Kumari found dead, due to the injuries and twisting her neck. I enquired about my brother-in-law, Kaviti Mohan Rao, and found that he was absconding. I am suspecting that my brother-in-law tortured her, beat her, and throttled her neck. Due to the said act, she was dead on the previous night. Previously, my sister told that her husband will kill her, but I pacified the matter and advised her to be brave and courage (sic). Due to the other reasons, I suspect that her husband murdered her, and hence, this report. I pray for necessary action in the matter.”

On the basis of the said report (Ex. P. 1), the police chalked out a formal FIR (Ex. P. 26), namely FIR No.116/2009, for offences under Sections 302 and 498-A IPC. During the course of the investigation, the appellant was arrested and put up for trial.

In order to prove its case, the prosecution has examined sixteen witnesses, submitted thirty two documents, and deposited two material objects. In turn, the accused examined a single witness, but did not produce any documents.

After appreciating the evidence, the learned Trial Court convicted and sentenced the appellant as mentioned hereinabove. Hence, the present appeal before this Court.

The learned Senior Counsel for the appellant, Mr. P. Veera Reddy, has raised the following grounds:-

Firstly, although the case is based on circumstantial evidence, as there is no evidence of the last seen, the prosecution has desperately tried to make this a case of direct evidence by producing Killi Asiri Naidu (P.W. 8) as an eyewitness. However, as Killi Asiri Naidu (P.W. 8) claims to be an auto-rickshaw driver, who was driving his auto rickshaw at 4.30 A.M., he claims to have seen the appellant closing the shutters of the Dabha hotel run by him. The said witness is not only a concocted witness, but is also a chance witness. For, an auto-driver, who was driving the auto-rickshaw, it will be very difficult to identify the appellant, when the auto-rickshaw was in motion. Moreover, he claims that he saw the accused closing the shutters at 4: 30 A. M. in an early November morning. Yet, there is no evidence to show that there was presence of light in the early dark hours of the winter morning for the

witness to identify the accused. Further, the prosecution has relied upon this sole witness to connect the accused to the alleged murder. But the witness is not of sterling worth. Therefore, the learned trial court is unjustified in relying upon the testimony of the sole witness, in order to convict the appellant.

Secondly, but for this witness there is no direct evidence with regard to the alleged commission of the crime by the appellant. Therefore, the case is based on circumstantial evidence. However, the prosecution has failed to prove the guilt of the appellant by submitting such cogent and convincing evidence, which would have unerringly point to his guilt. The prosecution does not even establish that the deceased was last seen with the appellant. There is no presumption of law that husband and wife were living together, at the hotel run, by the appellant. Since, the dead body was found in a hotel, a public place, therefore, the alleged murder could be committed by any other person, other than the appellant.

Thirdly, the lack of last seen evidence is significant in the present case, as the appellant has pleaded the defence of alibi. The said defence has been established by Kaviti Nageswara Rao (D.W. 1), the appellant's brother. According to Kaviti Nageswara Rao (D.W. 1), since he was celebrating a religious function, namely Ayyaappa Puja, the appellant had come to his house on 23.11.2009. The appellant was with him till 28.11.2009 at his house in village Govindapuram, Vajrakotturu Mandal. However, this facet of the prosecution case has been ignored by the learned trial Court.

Fourthly, according to Dr. Y.S.S.V.V. Prasad (P.W.16), he had discovered as many as nineteen injuries on the face of the deceased. However, in his cross-examination, he has clearly stated that *"there is a possibility of more than one person using force against the deceased as there are number of injuries on the body."* Therefore, a distinct possibility does exist that while the appellant was away to his brother's house in order to celebrate Ayyappa Puja, the deceased may have been killed by two or more persons in the hotel.

Fifthly, despite the fact that the hotel was a busy one, the prosecution has not examined any independent witness. It has examined only witnesses who are related to the deceased. Thus, they are interested and inimical witnesses. Hence, their testimonies cannot be relied upon, unless there is corroboration from other evidence produced by the prosecution. However, there is no evidence which corroborates the testimonies of these witnesses.

Lastly, because of gaping holes in the prosecution case, the prosecution has failed to establish the guilt of the appellant. Hence, he deserves to be acquitted by this Court.

On the other hand, the learned Public Prosecutor, Mr.Posani Venkatewarlu, has raised the following counter-arguments:

Firstly, Killi Asiri Naidu (P.W. 8) clearly states that he knew both the appellant and his wife. Therefore, it was easy for him to identify the appellant as the person who was closing the shutters of his hotel at 4:30 A.M.

Secondly, Garugubilli Anuradha (P.W. 5) and Kaviti Sai Pavan (P.W. 6), both testified to the fact that the appellant used to live with his wife in a house behind the hotel. Thus, it can be safely be presumed that the appellant and the deceased were living together on the fateful day.

Thirdly, Thammineni Srinivasa Rao (P.W. 1), Thammineni Ramesh (P.W. 4) and Garugubilli Anuradha (P.W. 5) speak about the motive for commission of the crime by the appellant. According to them, he wanted his wife to transfer some of the landed property in his name; he also suspected her character; he also demanded money from her family members for the purpose of running the hotel. Thus, a very strong motive did exist for the appellant to commit the murder of his wife.

Fourthly, Dr. Y.S.S.V.V. Prasad (P.W. 16), who performed the autopsy, has proved the homicidal nature of death of the deceased.

Fifthly, even after the death of the deceased was published in the local newspapers on 24.11.2009, the appellant did not make any enquiries about her sudden death. This behavior is against common human nature. Although, the appellant claims that he had sent number of representations to the police, but even these representations were not marked by the defence during the trial. Hence, there is both direct and circumstantial evidence, which establish the appellant's guilt with regard to both offences under Sections 302 and 498-A IPC. Therefore, the learned public prosecutor has supported the impugned judgment.

Heard learned counsel for the parties, perused the impugned judgment and examined the record.

It is, indeed, trite to state that the court is expected to assess the evidence objectively, and rationally. Merely because a woman may have been killed at the dead of the night, in a hotel, the nature of the crime should not adversely affect the objectivity of the Court. Moreover, no matter how strong the suspicion may be, it cannot take the place of proof. Thus, even if the conduct of the accused is amiss, it cannot form the basis of conviction. After all, it is for the prosecution to cover the distance from "may be true" to "must be true." Furthermore, the weakness of the defence does not strengthen the prosecution case. While appreciating the evidence in the present case, all these well settled principles of criminal law would have to be kept in mind.

Killi Asiri Naidu (P.W. 8) in his examination-in-chief states as under:

I am resident of Rammohanannagar at Ponduru. I am driver of auto by occupation, for the last 4 or 5 years. I know accused, who is running hotel by name Venus Dabha near Ambedkar Junction at Ponduru. I know his wife Lalithakumari also. She used to look after the business of the Dabha Hotel. On 24-11-2009 at about 10 or 10.30 a.m., I came to know that Lalithakumari died. At about 1.00 p.m., I went to the dead body of Lalithakumari in that Dabha hotel. At about 4.30 A.M. on that day, when I was taking passengers in my auto from bus stand at Ponduru to Rapaka Junction, while I was going on the road in front of the Venus Dabha, I noticed accused closing shutter of Dabha hotel hurriedly and going towards Rapaka Junction. Deadbody of Lalithakumari was found on the dining tables in the hotel. At that time, accused was not

found there. I was present at the time of inquest held by the police over the dead body of Lalithakumari. Police examined me.

A bare perusal of his examination-in-chief clearly reveals that this witness is not a reliable one. For, even if this witness were to be believed, he was driving his auto-rickshaw on the road, it is rather surprising that he could hear the downing of the shutter, especially when the auto-rickshaw itself makes sufficient noise to drown other noises. Moreover, in the Scene Observation Report (Ex. P. 7), there is no indication that there was any source of light in the street, whereby this witness could have seen the accused downing the shutters of the hotel. Furthermore, the witness claims that he saw the accused "*hurriedly shutting the shutter*". Such minute observation cannot be made when the auto-rickshaw is in motion, and that, too, in the dark hours of the early winter morning. Thus, clearly the witness is a planted one by the police in order to create him as viable and reliable eye-witness. Hence, clearly this witness is a concocted one; therefore, unreliable.

But for this witness, there is no evidence that the appellant was residing with the wife on the fateful day. Since the appellant had pleaded the defence of alibi, for which he had produced his brother, Kaviti Nageswara Rao (DW. 1), it was essential for the prosecution to prove the presence of the appellant in the village on the fateful day. However, the prosecution has failed to do so.

In the absence of reliable testimony of Killi Asiri Naidu (P.W. 8), the prosecution case rests upon circumstantial evidence, as far as the offence of Section 302 IPC is concerned. Of course, the prosecution has tried to link the accused to the alleged murder by showing that the ornaments of the deceased, namely the

Pustelatadu (M. O. 1) and the gold ring (M. O. 2), were handed over by the accused to the police. But B. Krishnamurthy (P. W. 12), the recovery witness, has turned hostile during the trial. Thus, the recovery of the ornaments is suspect. Besides the alleged recovery of the ornaments, no other circumstantial evidence has been produced to connect the accused to the alleged offence of Section 302 IPC. Therefore, the learned trial Court was unjustified in convicting the appellant for the offence under Section 302 IPC.

Although it is true that the appellant did not try to find out about the sudden death of his wife, that he did not mark the alleged representations sent by him to the police during the trial, but such omissions merely raise a suspicion about the culpability of the appellant. However, no matter how strong the suspicion may be, it cannot take the place of proof. Further, a conviction cannot be based on surmises and conjectures. Thus, his silence over the sudden death of his wife, his feeble defence of alibi cannot form the basis of his conviction. The unfortunate death of a woman, that too in a hotel, continues to be shrouded in mystery. Hence, the benefit of doubt has to be given to the appellant as far as the offence under Section 302 IPC is concerned.

However, the prosecution has produced Thammineni Srinivasa Rao (PW. 1), Thammineni Ramnesh (P.W. 4), Garugubilli Anuradha (P.W. 5), Kaviti Sai Pavan (P.W. 6), in order to prove the fact that the appellant was constantly fighting and physically abusing his wife. For, as her brother had given a parcel of land to the deceased, and as the father had given another parcel of the land to her, on which the hotel was constructed, which was run by the appellant, he wanted his wife to transfer these two plots in

his name. When she refused to do so, he would assault her. Thammineni Srinivasarao (P.W. 1) and Garugubilli Anuradha (P.W. 5) also claim in their testimonies that the appellant used to demand that his wife should go to her paternal family and get more money for him. Therefore, the prosecution has succeeded in proving the physical and mental cruelty inflicted by the appellant upon his wife. Hence, the learned trial Court was justified in convicting the appellant for offence under Section 498-A IPC.

For the reasons stated above, the appeal is partly allowed. The appellant's conviction for the offence under Section 302 IPC, as recorded by the impugned judgment, dated 25.07.2012, is set aside. He is acquitted of offence under Section 302 IPC. However, his conviction and sentence under Section 498-A IPC, by the impugned judgment, dated 25.07.2012, is confirmed. However, as the appellant has already completed more than six years of incarceration, and since he was sentenced to merely three years for offence under Section 498-A IPC, he has completed the said sentence. Therefore, the appellant shall be set at liberty forthwith, if he is not wanted in any other criminal case. His bail bonds shall stand cancelled.

RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 31.12.2018

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