

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

Crl.A.No.829 of 2011

Between:

Bandala Saya Goud.

.....Appellant

And

The State of A.P.

.....Respondent

JUDGMENT PRONOUNCED ON : 04.04.2018

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T. RAJANI**

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment ?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals ?
3. Whether Their Ladyship/ Lordship wish to : Yes/No
see the fair copy of the judgment ?

SURESH KUMAR KAIT, J

T. RAJANI, J

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For Appellant : Ms.C.Vasundhara Reddy, Advocate.

For Respondent : Public Prosecutor.

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> Head Note:

? CITATIONS:

(2004) 5 SCC 334

C/15



**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T.RAJANI**

CRIMINAL APPEAL No.829 of 2011

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

The present appeal is preferred against the order and judgment dated 29th November 2010, passed in Sessions Case No.335 of 2008 by the IX Additional Sessions Judge, Kamareddy, whereby, the appellant was found guilty for the offences punishable under Sections 498-A and 302 of IPC. Accordingly, he was sentenced to undergo simple imprisonment for a period of three years for the offence under Section 498-A IPC and to undergo life imprisonment for the offence under Section 302 of IPC and to pay a fine of Rs.10,000/-. In default of payment of fine, to undergo simple imprisonment for a period of three months. Both the sentences were to run concurrently.

2. Brief facts of the case are that about 18 years prior to the incident, the deceased was given in marriage to the appellant (hereinafter referred to as 'the accused'). At the time of marriage, 3 tulas of gold, Rs.70,000/- cash and other household articles were given. They led happy marital life for some time and were blessed with a female child i.e. PW-2. Subsequently, accused harassed the deceased demanding Rs.3,00,000/- and some times Rs.5,00,000/-. He also suspected her character and used to beat her frequently. As the accused continued his harassment, PW-2 stayed at Chittapur village with her grandmother i.e. PW-1 and pursued her studies. On 27.12.2007, at the instance of the deceased, PW-2 visited her and slept there with her paternal grand parents. In the middle of the

night, on hearing the cries of her mother i.e. deceased, PW-2 went into the room and questioned her as to why she was weeping. On that, accused, who was found in aggressive mood, pushed PW-2. Being frightened, PW-2 left the room and hid herself. Thereafter, accused searched for her. PW-2 got into an auto which was stationed at the road and went to Ramayampet and from there, to Chittapur and informed PW-1/mother of the deceased. Next morning, they were informed by one Ramagoud about the death of the deceased. They immediately rushed to the scene and found the deceased hanging to the wooden beam on the roof with a saree, in the kitchen room. On that, PW-1 immediately lodged a report, which is marked as Ex.P-1.

3. On 28.12.2007, at about 12.30 p.m., on receiving Ex.P-1/report from PW-1, PW-8/the then ASI of Police, Bhiknoor Police Station, registered a case in Crime No.242 of 2007 and issued FIR, which is marked as Ex.P-7. Investigation was taken over by PW-9/the C.I. of Police, Bhiknor. He visited the scene of offence and got the scene photographed through PW-6. Ex.P-4 are the photographs. He then got removed the body from the ceiling and then held scene of offence panchanama in the presence of PW-5, which is marked as Ex.P-2. He further held inquest over the dead body of the deceased, which is marked as Ex.P-3. During the course of investigation, he recorded the statements of PWs.2 to 4. Thereafter, he sent the deadbody for postmortem examination.

4. On receiving requisition dated 28th December 2007, PW-7/the then Civil Assistant Surgeon at Area Hospital, Kamareddy, held autopsy over the dead body of the deceased and opined that the cause of death was due to Asphyxia due to hanging. Ex.P-5 is the postmortem report.

5. On 06.01.2008, PW-9 apprehended the accused and sent him for judicial remand. After receiving all the relevant documents and on completion of investigation, he filed the charge sheet. After furnishing of copies to the accused, the learned trial Court framed charges under Sections 498-A and 302 of IPC. The accused pleaded not guilty and claimed to be tried.

6. Learned counsel appearing on behalf of appellant does not dispute the conviction under Section 498-A of IPC and sentencing the appellant for a period of 3 years since the appellant has already undergone more than Six years of imprisonment. However, she submitted that as per the deposition of PW-7/Doctor who conducted autopsy over the dead body, two views emerged – (i) it is a suicidal death and (ii) it is a homicidal. Learned counsel submits, if two views are there, the benefit of the same is to be given to the accused. Thus, the appellant deserves to be acquitted from the charge of Section 302 IPC.

7. We have heard learned counsel for parties and perused the record.

8. In view of arguments advanced by the counsel for the appellant, discussing the depositions of other witnesses is not necessary, however, it is important to discuss the deposition of PW-2/B.Rekha, who is the daughter of accused and the deceased. She deposed that in the year

2006-07, she studied 10th Class by staying in the house of her grand mother/PW-1 at Chittapur village, as her father i.e. the accused was harassing and beating her mother and also was suspecting her character all the time. The accused also used to follow her (PW-2) to the school and see if she was with any boy. The accused used to lock the house keeping her mother inside the house when he used to go out. He never allowed her mother even to peep from the window. He used to place stones on the edges of the curtains in order to see that her mother does not look through the window.

9. She further deposed that on 26.12.2007, which was a Wednesday, her mother rang her up and asked to come home as she was preparing sweet chapathi (*polelu*). As such, she visited her mother on 27.12.2007 and since it was night, she had her dinner and slept with her paternal grand parents. In the middle of her sleep, she heard noise from her parents' room. She heard her mother crying. As such, she opened the door and went into the room of her parents and saw her mother weeping. When she was questioning her mother as to why she was crying, the accused came and questioned her whether she require the answer from her mother, and pushed her away in an aggressive mood. Seeing the aggressive mood of her father, which was on extreme side, she got frightened and left the room feeling that he may take some drastic step. The accused came out of his room, searched for her and again went back into the room. At that time, she noticed an Auto on the road. As such, she got into the Auto and went to Ramayampet, and from there, to Chittapur and informed her grand mother i.e. PW-1 that the accused was

beating her mother severely. PW-1 told her that they will take some village elders and visit the house of her father on the next day morning. Early in the morning on the next day, her paternal aunt's husband, namely, Ramagoud came to PW-1's house and informed that her mother died. Later, they came to the house of his father along with other villagers in a Tractor. They saw the body of her mother with broken toes on the left foot, injured finger tips, broken nose and other injuries on the body. She further deposed that her father hanged her mother to the wooden beam on the roof with her saree in the kitchen room. Her father i.e. accused himself killed her mother. Accordingly, her maternal grand mother i.e. PW-1 lodged complaint to the Police.

10. The statement of PW-2 is corroborated by PW-1/mother of the deceased, PW-3/cousin brother of the deceased and PW-4/brother of the deceased.

11. PW-7/Dr.Ajay Kumar, who conducted autopsy on the body of the deceased, deposed that on 28.12.2007 at 4.10 p.m., he received requisition from the Police, Bhiknoor for conducting postmortem examination on the dead body of Bandolla Savithri, aged 35 years. As such, he conducted the autopsy over her body on the same day from 4.15 p.m. to 5.30 p.m. During the said examination, he found the following ante-mortem injuries :

- "1. An abrasion left great toe measuring $\frac{1}{2} \times \frac{1}{2}$ cms.
2. An abrasion over left nostril measuring $\frac{1}{2} \times \frac{1}{2}$ cms.
3. Clotted blood present over the upper teeth and the gums.
4. An abrasion over the back of left scapula measuring 2x2 cms.

5. *Legature mark on the front of the neck, which is 'U' shape measuring 30x5 cms.*
6. *Knot mark was present behind the ear on the left side."*

12. PW-7 further deposed that on dissection of the dead body, he found blood clots in the throat muscles. He also found the tricia, branchy and both lungs were conjusted apart from a contusion over the small and large intestine. He then sent the viscera for chemical analysis. On receiving FSL report, he opined that the death of said Savithri was due to Asphyxia due to hanging. Accordingly, he issued certificate vide Ex.P-5. The FSL report is Ex.P-6. He stated that injury Nos.1 to 6 were not possible in case of a suicidal death. Whereas, in the cross-examination by the counsel for the accused, he admitted that injury Nos.5 and 6 mentioned in Ex.P-5 were possible by way of hanging a person.

13. The aforesaid statement was recorded on 17th June 2010. The witness was recalled thereafter vide order dated 19th August 2010 for further cross-examination, in which, he admitted that injury Nos.5 and 6 were possible in a case pertaining to suicide. He also added that the said injuries were also possible in case of hanging i.e. homicide.

14. From the deposition of PW-7/Doctor, it is evident that he was not sure as to whether injury Nos.5 and 6 were caused due to suicide or homicide. The fact remains that there were six injuries as mentioned above and all were ante-mortem, which is not disputed by the defence counsel. As stated by PW-2/daughter of the accused and the deceased, she saw the dead body of her mother with broken toes on the left foot, injured finger tips, broken nose apart from other injuries on her body.

This fact has been corroborated by the post-mortem report/Ex.P-5. It is also a fact that the death of the deceased was due to Asphyxia. PW-7/Doctor who conducted autopsy was not clear as to whether injury Nos.5 and 6, which were the material injuries, were caused by suicide or by homicide. But, the fact remains that the accused used to beat and harass the deceased, and on 27.12.2007, he beat the deceased, which was witnessed by PW-2, who is none other than his daughter. The defence counsel cross-examined PW-2, but she was consistent with her deposition.

15. As per medical jurisprudence, it is difficult to kill a person and thereafter hang by a single person. This can be possible if the deceased is very weak or a child. In the present case, the age of the deceased is 35 years and height is 5 feet. Though weight is not on record, but we can say from the photographs/Ex.P-4 that it was difficult for the accused to commit homicide and thereafter hang the deceased. As per Section 106 of the Evidence Act, explanation has to come from the accused being husband of the deceased as to what had happened to his wife on the date of incident. Though he has taken the plea of *alibi*, however, there is no corroborating evidence to prove the same. Thus, it is established that the appellant/accused was very much in the house on the date of incident and that fact is corroborated by the evidence of PW-2/his daughter. It is also the fact that the deceased was beaten by the accused on the night of the incident in the room where they used to sleep, but the deceased was found in hanging position in the kitchen.

16. We have perused the record and photographs. It has come out from the said photographs that the deceased hanged with saree and knot of the saree was on the left side of the face. There is a kitchen slab, from where, it appears, she hanged and thereafter jumped from the said slab. Therefore, keeping in view the deposition of PW-7/Doctor who conducted autopsy, we are of the opinion that the deceased had committed suicide due to the harassment and frequent beating in the hands of her husband i.e. the accused. It seems that after receiving the beatings of accused on that night, the deceased left the room and went into kitchen and hanged herself. Thus, she ended her life. The hanging of the deceased was because of the abetment due to beatings given by the accused/husband.

17. Though the learned trial Court has not framed the charge under Section 306 of IPC, however, the law has been settled in the case of **Dalbir Singh v. State of U.P.**¹, whereby, it is held as under :

“There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.

¹ (2004) 5 SCC 334

We are, therefore, of the opinion that Sangaraboina Sreenu [(1997) 5 SCC 348] was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC.”

18. The defence of appellant before trial Court was two fold - (i) the *alibi* and (ii) the deceased has committed suicide. The appellant has failed to prove the defence of *alibi* by not producing any defence to this effect. The second defence is that he has not killed the deceased but she herself hanged and committed suicide.

19. Now, question is, why the deceased has committed suicide ? The deposition of PW-2 has proved that the appellant used to beat and harass the deceased. On the date of incident also, he beat the deceased. Accordingly, the deceased was fed-up with the harassment caused by the appellant and finished her life. We have no hesitation to say that the appellant was fully aware, while taking second defence, that he may be convicted for the offence under Section 306 of IPC, if not under Section 302 of IPC. Therefore, even if the trial Court has not framed charge under Section 306 of IPC, still, the appellant can be convicted for the aforementioned offence keeping in view the dictum of Hon'ble Supreme Court in the case of **Dalbir Singh** (supra 1).

20. In view of the above discussion and the legal position, we hereby set aside the conviction of appellant/accused for the offence under Section 302 of IPC. However, we convict the appellant for the offence under Section 306 of IPC.

21. It is on record that apart from the remand period, the appellant remained in jail for Seven years and thereafter, he was released on bail vide order dated 12th June 2017. We hereby sentence him to the imprisonment already undergone.

22. Appeal is accordingly allowed in part.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

4th April, 2018

N.B:

L.R. copy be marked.
(b/o)
ajr



T. RAJANI, J