

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.89 of 2013

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The present appeal came to be filed by A1 in Sessions Case No. 330 of 2010 on the file of the XI Additional District and Sessions Judge, Krishna, Gudivada, assailing the conviction and sentence imposed on him. Vide judgment dated 13.12.2012, the learned Sessions Judge, while acquitting A2 to A4 of all the charges, convicted A1 for the offences punishable under Sections 302 and 201 IPC and sentenced him to suffer imprisonment for life for the offence punishable under Section 302 IPC and to pay a fine of Rs.5,000/-, to suffer imprisonment for seven years and to pay a fine of Rs.5,000/- for the offence punishable under Section 201 IPC. Both sentences were directed to run concurrently.

2. The gravamen of the charge against the accused is that on 09.01.2010 at 12 noon at Mudinepalli town, A1 is alleged to have caused the death of his wife (deceased) by squeezing her neck with a telephone wire, and thereafter, with an intention to screen the evidence, hanged the dead body to the iron pipe attached to the ceiling.

3. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

The accused is the husband of the deceased, while PW1 is the father of the deceased. PW2 is the son of PW1. PWs 3 and 4 are all residents of the same village. A2 and A3 are parents of A1 and A4 is the brother of A1. The marriage between A1 and the deceased took place three to four months prior to the date of incident. PW1, in his evidence, deposed that no dowry was given to A1 because the alliance was with their relatives. PWs 1 to 4, who are family members of the deceased, did not support the prosecution case, and as such, they were treated hostile by the prosecution. Therefore, the prosecution based its case mainly on the evidence of PW7, who is a resident of Kodali and doing the job of a Driver.

4. According to PW7, his car was engaged to go to Thallapalem, at the time of settlement of the marriage between the accused and deceased. He deposed that the deceased was related to him through his brother-in-law. According to him, the marriage was settled on payment of a dowry of Rs.7 lakhs and the marriage was performed on 03.09.2009. According to him, cash of Rs.5 lakhs was paid during the time of marriage and the balance amount of Rs.2 lakhs was to be paid. He further deposed that about two acres of land was given as security after marriage, and the deceased was sent to the house of the accused with sare samans. His evidence shows that on one occasion, he visited the house of the accused

and found the accused and deceased living happily. Afterwards, on a call from the deceased, he went to the house of the accused, wherein the deceased informed him that her husband was quarrelling with her in drunken state, asking her to bring the balance dowry, and that her in-laws are not able to control the accused and were encouraging him. Three months and five days thereafter, the incident in question is said to have taken place. Immediately on receipt of the information, he went to the house of the accused and was informed that the deceased committed suicide by hanging.

5. On 09.01.2010, PW1 lodged a report (Ex.P1), basing on which Crime No. 7 of 2010 came to be registered by PW10 under Sections 498-A read with 306 and 34 IPC. Ex.P14 is the original F.I.R. PW10 then proceeded to the scene of offence situated in the house of the accused and noticed the body of the deceased. He prepared an observation report in the presence of PW5, which is placed on record as Ex.P5. He also got prepared the rough sketch of the scene, which is placed on record as Ex.P15. After completing the said proceedings, he conducted inquest over the dead body in the presence of PW8-the Village Revenue Officer. Ex.P7 is the inquest report. During inquest, he examined PW1 and LWs 2 to 5 and recorded their statements. Thereafter, he sent the dead body for post mortem examination.

6. PW6-the Civil Assistant Surgeon, Area Hospital, Gudivada conducted autopsy over the dead body of the deceased and issued

Ex.P12-the post mortem report. According to him, the cause of death was due to haemorrhagic shock due to injury on the right frontal region and due to asphyxia caused due to hanging. Basing on the post mortem report, PW10 altered the section of law from 306 IPC to 302 IPC and issued altered F.I.R., which is placed on record as Ex.P16.

7. Further investigation in the matter was taken up by PW9-the Inspector of Police, Gudivada Rural Circle. According to PW9, on receipt of the altered F.I.R., he proceeded to the scene of offence, examined PWs 2, 3 and 4 and recorded their statements. On the same day, on receipt of credible information about the presence of A1, PW9 collected two official mediators, PW5 and another person proceeded to Vadali center and arrested A1. On interrogation, A1 is said to have confessed about the commission of the offence. Pursuant to the confession, M.Os.2 and 3 are said to have been seized under Ex.P8. On the next day, PW9 arrested A2 to A4 in the residence of A2 and produced them before the Magistrate.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.26 of 2010 by the Additional Judicial First Class Magistrate, Gudivada. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.330 of 2010 on the file of XI Additional District and Sessions Judge, Krishna, Gudivada. Basing on the material on record, charges for the offences punishable under

Sections 302 and 201 of IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

9. To substantiate their case, the prosecution examined PWs. 1 to 10 and got marked Exs.P1 to P17. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf by the accused in support of their defence.

10. Basing on the circumstantial evidence, the learned Sessions Judge, while acquitting A2 to A4, convicted the appellant (A1) under Section 302 IPC and sentenced him to suffer 'imprisonment for life'. The trial court also gave a finding that the allegation of harassment by the accused and subjecting the deceased to cruelty for additional dowry, is false. In other words, the trial court disbelieved the evidence of PW7. Coming to the incident proper, though the plea of the accused was that it is a case of suicide and the deceased was an epilepsy patient, the same was rejected by the trial court, taking into consideration the evidence of the post mortem doctor. Having regard to the facts in issue, more particularly, since A1 failed to explain as to how the deceased died in his house, the trial court convicted A1 under Section 302 IPC. While convicting A1 under Section 302, the trial court observed as under:

“Considering the facts and circumstances of the case, it appears it is not a pre planned cold blooded murder. It appears, it was committed without any premeditation in the circumstances developed at such time.”

11. Keeping the findings of the trial court in view, we shall now proceed to deal with the case on hand. The question which falls for consideration is whether the accused is liable for the offence alleged against him, and if so, whether he can be found guilty for the offence punishable under Section 302 IPC.

12. The learned counsel for the appellant mainly submits that since there are no direct witnesses to the incident, the conviction of the accused under Section 302 IPC cannot be sustained.

13. On the other hand, the learned Public Prosecutor countered the same stating that having regard to the nature of the injuries found on the body of the deceased, it cannot be said that the accused had no intention to cause the death of the deceased. Insofar as the incident in question is concerned, he would submit that the evidence of PW7 is sufficient to base a conviction.

14. As seen from the record, PWs 1 to 4, who are the family members of the deceased, did not support the prosecution case and were treated hostile by the prosecution. The entire case is based on the evidence of PW7-the car driver, who claims to be a distant relative of the deceased. Insofar as the evidence of PW7 is concerned, it is to be noted that though in the cross-examination,

PW7 spoke about the dowry being fixed at Rs.7 lakhs, an amount of Rs.5 lakhs being paid by cash and the deceased being subjected to harassment for the payment of the balance amount of Rs.2 lakhs, but he admits that he has not seen the payment of cash as dowry. In fact, it is not his case that he also went inside the house along with the family members of the deceased at the time of marriage talks. As stated earlier, he is only a driver, whose vehicle was used by the family members of the deceased during her marriage. In the cross-examination, PW7 admits that the deceased never informed him about her married life, and the parents of the deceased never placed the matter before elders. Therefore, his version that he was a witness to payment of the dowry and harassment of the deceased in the hands of the accused, cannot be accepted, and hence, the finding of the trial court in disbelieving the evidence of PW7 warrants no interference.

15. If the evidence of PW7 goes, there remains the evidence of the doctor who conducted post mortem on the body of the deceased, and the circumstance of dead body having present in the house of the accused.

16. The evidence on record shows that the accused was in the habit of consuming alcohol every day. It is also borne by record that on the next day of the incident, he was present in the cremation ground and it was he who cremated the dead body. Therefore, in view of the above, it is urged by the learned counsel

for the appellant that since the deceased committed suicide, the accused did not make any effort to escape from the scene.

17. On the other hand, the learned Public Prosecutor would contend that merely because the accused was present in the village at the time of cremating the deceased, it does not prove his innocence, since the truth came out only after the report of the post mortem doctor.

18. As stated earlier, PW1, who is the father of the deceased and who is the person who set the law into motion by giving a report, did not support the prosecution case. He went to the extent of saying that though the report bears his thumb impression, he does not know the contents of the report, as he is an illiterate person. That being the position, the version in the First Information Report that the deceased telephoned to PW1 and stated that she could not stay there, apprehending threat to her life and requesting him to take her away from that place, also cannot be accepted, since the maker of the said statement is disowning the same. Even PWs 2, 3 and 4, in their evidence, never spoke about any harassment meted out to the deceased in the hands of the accused, except stating that on the date of incident, they saw the body of the deceased in the hands of the accused. Therefore, the finding of the trial court with regard to acquitting the accused for the offence punishable under Section 498-A, by holding that there was no harassment or any demand for dowry, does not warrant any interference.

19. But, one circumstance which the accused failed to explain, is, as to how the deceased died. The fact that he was living with the deceased in the house is not in dispute and the fact that the body of the deceased, with an injury on the head, was in the house of the accused, is also not in dispute. The question is whether it is a case of suicide or homicide.

20. PW6 is the doctor who conducted post mortem examination on the body of the deceased. He found three injuries on the body of the deceased, which are as under:

1. Fracture of 4 x 2 cm at right frontal region, may be due to blunt object and it is antemortem in nature.
2. A ligature mark of 21 cm. x 2 cm. extending from right side of the neck to the left side of the neck, may be due to cloth, antemortem in nature; the ligature mark is continuous without gap.
3. Fracture $\frac{1}{2}$ x 1 cm. right side greater cornu of hyoid bone, may be due to blunt object and antemortem in nature.

In the final opinion given by the doctor, which is placed on record as Ex.P13, two reasons are given for the death of the deceased, viz., (1) due to haemorrhagic shock due to injury at the right frontal region, and (2) due to asphyxia caused due to hanging.

21. In view of the opinion of the doctor, the learned counsel for the appellant contended that it is a case where the deceased must have committed suicide. If the deceased has committed suicide, as pleaded by her, there is no explanation on the part of the

accused as to how there was a fracture on the right frontal region, which was caused due to a blunt object. It is not the case of the accused that the deceased fell down and sustained the said injury. His plea appears to be inconsistent. On one hand, he says that since she is an epileptic patient, she must have fallen on the ground, leading to injury, and on the other hand, says that she has committed suicide. Both cannot take place simultaneously. The doctor, in his evidence, categorically states as under:

“The ligature mark may not be due to M.O.2, because the width of M.O.2 is less than 1 c.m. The ligature mark is possible with M.O.1 saree.

Since injury No.1 found on the deceased caused severe internal bleeding, after having such injury, such injured person cannot hang herself. Due to such amount of bleeding caused internally, such person would become unconscious.

According to me, it is not a case of suicide.”

He further states as under:

“Even if due to epilepsy if a person had falled and received the injury No.1, one can not raise from the ground because he will go into unconscious stage, because of such internal bleeding. Even otherwise, the person can not recover from epilepsy in a short time to commit suicide by hanging, and atleast one or two hours time will be taken after giving proper treatment, even to stand up freely.

It is a misnomer to say that people will recover from epilepsy if some iron piece is kept in his hands. It has no scientific reason.”

22. Though the plea of the accused is that the deceased committed suicide, but, having regard to the circumstances in which the incident occurred and taking into consideration the nature of injuries on the body of the deceased, the doctor opined that it is not a case of suicide. The plea that the deceased sustained injuries due to epilepsy, was also negatived. The plea that she fell down on the ground, and thereafter, committed suicide, was also negatived, as the doctor opined that one cannot raise from the ground because he will go into unconscious stage, because of internal bleeding. It is further stated by him that a person cannot recover from epilepsy in a short time to commit suicide. Therefore, both the pleas taken by the accused are negatived by the medical evidence. Further, as per Section 106 of the Indian Evidence Act, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In the instant case, the burden lies on the accused to explain as to the cause of death of the deceased and the presence of the body of the deceased in his house. In the absence of any explanation on the part of the appellant as to how the deceased died, it can safely be held that the accused alone is responsible for the death of the deceased. In the absence of any explanation given by the accused, it stands established that the accused is responsible for the incident in question.

23. The evidence on record nowhere indicates motive on the part of the accused to cause the death of the deceased. In view of the nature of injuries present on the body of the deceased, it appears that the incident happened in a totally different circumstances, more so, when the evidence on record show that the accused was in drunken condition at that time. Strangely, while holding that the accused has no motive or intention to kill the deceased, and the incident in question must have occurred due to some quarrel between the accused and deceased, the trial court convicted the accused under Section 302 IPC.

24. Admittedly, PWs 1 to 4 turned hostile, and there is no other evidence on record to show existence of any enmity or ill-will between the accused and the deceased, more so, when the evidence of PW7 was disbelieved. In the absence of any findings as to the motive on the part of the accused and having regard to the findings given by the trial court that there was no motive or intention to kill the deceased and that the incident happened due to certain circumstances which developed at that time, we feel that it is a fit case where the nature of offence can be scaled down to one of Section 304-II IPC. In view of the finding given that it is not a case of suicide and in the absence of any explanation given by the appellant as to how the dead body was hanged to the iron pipe attached to the ceiling, which, in our view, must have been done to screen the evidence, the conviction under Section 201 IPC requires no interference.

26. Having regard to the above, we feel that the conviction of the appellant under Section 302 IPC needs to be altered to one under Section 304 Part-II IPC., while confirming the conviction and sentence under Section 201 IPC.

27. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ A1 in the judgment dated 13.12.2012, in Sessions Case No.330 of 2010 on the file of the XI Additional District and Sessions Judge, Krishna, Gudivada for the offence punishable under Section 302 I.P.C. is altered to one under Section 304 Part-II IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years. The conviction and sentence recorded for the offence punishable under Section 201 IPC remains un-altered. Both the sentences shall run concurrently. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ A1 shall be set at liberty forthwith on completion of seven years rigorous imprisonment, if not required in connection with any other case. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

07.02.2018
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