

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

Crl.A.No.944 OF 2012

Between:

Kondapalli Buchaiah, S/o Bhumaiah
... appellant/A-1.
and

The State of Andhra Pradesh
Rep by the Public Prosecutor
... Respondent

JUDGMENT PRONOUNCED ON: 27th September, 2018.

HON'BLE SRI JUSTICE SURESH KUMAR KAIT :

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD :

- 
- 1 Whether Reporters of Local newspapers
may be allowed to see the Judgment? :
 - 2 Whether the copies of judgment may be
marked to Law Reports/Journals? :
 - 3 Whether Their Lordship wish to see the
fair copy of the Judgment? :

*** HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD
+ CRIMINAL APPEAL No.944 OF 2012

% 27-09-2018

Kondapalli Buchaiah, S/o Bhumaiah

... Appellant/A-1.

vs.

\$ The State of Andhra Pradesh, rep. by
Public Prosecutor

... Respondent

!Counsel for the Petitioner : Sri M. Ram Mohan Reddy

^Counsel for the Respondent : Public Prosecutor (TG)

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>Head Note :

? Cases referred



**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.944 OF 2012

JUDGMENT:

(per Hon'ble Sri Justice Suresh Kumar Kait)

The present appeal is preferred against judgment and order dated 14.09.2012 passed in Sessions Case No.667 of 2011 by the IV Additional Sessions Judge, Karimnagar, whereby the learned Court acquitted the accused/A-2 to A-5, who are not found guilty. However, accused/A-1 (appellant herein) has been convicted for the offence punishable under Sections 498-A, 302, 201 of IPC and Sections 3 & 4 of Dowry Prohibition Act (for short "D.P.Act"). Consequently sentenced him to undergo (1) Simple Imprisonment, for three years and fine of Rs.5,000/-, in default, to suffer Simple Imprisonment, for three months for the offence punishable under Section 3 of D.P Act; (2) Simple Imprisonment for three months and fine of Rs.2,000/-, in default, to suffer Simple Imprisonment, for one month for the offence punishable under Section 4 of D.P Act; (3) Simple Imprisonment for one year and fine of Rs.1,000/-, in default, to suffer Simple Imprisonment, for one month for the offence punishable under Section 498-A IPC; (4) Life Imprisonment and fine of Rs.10,000/-, in default, to suffer for six months for the offence punishable under Section 302 IPC and sentence of one year; and (5) Simple Imprisonment for one year and fine of Rs.1,000/-, in default,

to suffer for one month for the offence punishable under Section 201 IPC. All the sentences are directed to be run consecutively in the sequence stated above.

2. The case of the prosecution in brief is that:

One Myakala Ramesh, Ramaraopalli Village, lodged a complaint before Vemulawada Police on 12.09.2011, alleging that, marriage of his sister deceased Jamuna was performed with appellant (who shall be referred as A-1) about 10 years back after giving Rs.50,000/- cash and 5 tulas gold as dowry. The couple were happy for some period and they blessed with three children. Ever since the marriage, A-1 was demanding money from the deceased Jamuna for his business and to go to abroad. Accordingly, they arranged Rs.15 lakhs. But there was no change in his attitude. The deceased Jamuna returned to her parents' house about 10 days before the date of incident, as she was necked out by A-1, and complained the same to them. A-1 came to his house on 11.09.2011 discussed with them, assured good treatment and had taken away his wife Jamuna at 5.30 PM and started living in their rented house at Vemulawada. On the next day, A-1 informed him at 12.00 noon that, he murdered his sister and hanged her to ceiling fan and asked him to go and see her dead body. On receipt of this information, he informed to his father and went to Vemulawada, found her sister Jamuna hanging with a rope to ceiling fan. He suspected that A-1 must have murdered deceased Jamuna and hanged her to roof to show it

as a suicide. He suspected the role of A-2 to A-5 also. Accordingly, he made a complaint to the police.

3. On receipt of the complaint, Vemulawada Police registered a case for the offences punishable under Sections 498-A, 302, 201 IPC and Sections 3 & 4 of D.P. Act. The said Police took up investigation, visited the scene of offence, secured mediators, got the dead body photographed, removed body from the roof, examined the dead body, found ligature mark on throat. Thereafter, made arrangement for post-mortem examination, prepared inquest, secured evidence and arrested the accused/A-1. Thereafter, Police examined accused/A-1 and recorded his confessional statement in the presence of witnesses and seized a pillow as produced by the accused, arrested later on other accused also. Accordingly, completed other formalities and laid charge sheet before the concerned Magistrate.

4. On receipt of the same, learned Magistrate had taken it on file, complied necessary requirements under Section 208 Cr.P.C., and committed the case to District & Sessions Court, Karimnagar, which had taken it on file as S.C.No.667 of 2011 and made over the case to I Additional District & Sessions Judge. Later, it was transferred to the Court mentioned above for trial on 16.05.2012. After accused appeared in the trial Court, upon considering the record and hearing the accused and

prosecution, and as there was ground to presume that accused committed above offences, charges under Section 228 Cr.P.C., for offence punishable under Sections 498-A, 302, 201 of IPC and Sections 3 & 4 of D.P.Act against the accused were framed, read over and explained it to them in Telugu. They all pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution examined PW.1 to PW.18, marked Exs.P1 to P11 and MOs.1 and 2. Thereafter incriminating material available against the accused was informed to them under Section 313 Cr.P.C. They denied the same and examined DW.1 to show that the appellant/A-1 was with him at the alleged time of offence.

6. After appearance of learned counsel for the accused and learned Additional Public Prosecutor for the State, the learned trial Court acquitted A-2 to A-5 for all the charges mentioned above, however, convicted A-1 i.e., the appellant herein, for the offences mentioned above. Hence, the present appeal.

7. Learned counsel appearing on behalf of the appellant/A-1 submits that the complaint-Ex.P1 made by PW.1 was received in Vemulawada Police Station on 12.09.2011, whereby stated that, on 12.09.2011 at 12.00 noon the appellant/A-1 called PW.1 on mobile No.9553355703 from his mobile No.9701709862 and informed that he killed his sister and hanged her dead body

to ceiling fan and asked him to go and see her dead body. Immediately, he through telephone informed to his father Gangaram and his younger sister Jyothi. On reaching there, they found the dead body of his sister Jamuna was hanging with a rope to ceiling fan in her house. Accordingly, alleged that his sister was killed by her husband (A-1) and hanged her dead body with a rope to ceiling fan in the house screening that herself committed suicide. After the incident, the appellant fled away from the house.

8. Learned counsel submits that since the police has got verified the calls of PW.1 and the appellant therefore the deposition of PW.1 cannot be relied upon. The fact is that A-1 purchased house which was sold by PW.1 without the consent of A-1. Accordingly, PW.1 and his family members implicated all the members of A-1 so that they would not ask money which PW.1 has received from the sale consideration of the house of A-1. He further submitted that the deceased has committed suicide herself but there is no role of A-1 who is appellant herein.

9. Learned counsel for the appellant further submits that the deceased left a written suicide note which has not been sent to FSL for examination whereby the deceased herself stated that no one is responsible for her suicide.

10. It is further submitted that it cannot be believed that A-1 committed murder first and thereafter hanged the

deceased on ceiling fan just to show that the deceased herself committed suicide. He submitted that it is difficult to hang the dead body single handily on a ceiling fan.

11. To strengthen his arguments, on the above aspect, learned counsel for the appellant, has relied upon a case of **R.Rajendran Nair vs. State of Kerala**¹, whereby the Hon'ble Supreme Court held that, *for an individual to hang a living person (who would certainly make all possible efforts to extricate himself) after lifting him to a certain height seems to be rather improbable*. Thus, in the present case also, it was not possible for A-1 to hang the dead body of the deceased after committing murder.

12. While concluding his arguments, learned counsel for the appellant has argued that, the witnesses examined by the prosecution are not independent but interested witnesses. Though prosecution has examined some villagers, elders to prove the harassment of the deceased by A-1, however they did not support the prosecution case. But, the evidence of the interested witnesses has erroneously relied upon by the trial Court and convicted the appellant herein. He further submitted that there is no direct evidence against the appellant and based upon the same evidence, A-2 to A-5 have already been acquitted by the trial Court. Thus, A-1 is also entitled to be acquitted in the present case.

¹ 1998(1)ALD CrI.13 SC

13. Learned Public Prosecutor appearing on behalf of the State, submits that, the prosecution has examined, as many, as, 18 witnesses, marked Ex.P1 to Ex.P11 and MOs.1 and 2, which established that the appellant committed murder of the deceased and thereafter hanged her on ceiling fan to show that the deceased herself committed suicide. Moreover, after considering the defence of the appellant under Section 313 Cr.P.C., learned trial Court has rightly convicted the appellant/A-1. Thus there is no merit in the present appeal and the same is liable to be dismissed.

14. There is no direct evidence in the present case thus rests upon the circumstantial evidence. It is trite that such evidence must satisfy the following tests:

“(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused.

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else;

(iv) the circumstantial evidence in order to sustain conviction must be completed and incapable of explanation of any other hypothesis than that of the guilty of the accused and such evidence should not only be consistent

with the guilt of the accused but should inconsistent with his innocence.”

15. PW.1 is the elder brother of the deceased and *de facto* complainant. He stated that, they performed marriage of deceased with the appellant/A-1 about 10 years back by giving Rs.1,50,000/- as dowry. His father had given some amount subsequently also as additional dowry. The couple has three children and there were disputes between the appellant and the deceased. There were panchayats also to settle the disputes. A-1 was beating Jamuna for bringing money from her parents. So they had given Rs.3 lakhs once and Rs.7 lakhs another time to satisfy him. A-1 agreed in a panchayat about his harassment and assured to look after the deceased properly. Six months thereafter his sister complained again that the appellant/A-1 was beating her. Accordingly she returned to their parents' house. She made such repeated complaints. They had no money to pay immediately but promised to pay after some time. A-1 again came to their house and took the deceased with him but the next day they received a call at 10.30 A.M. from A-1 that he murdered Jamuna, go and see her dead body.

16. PWs.2 and 3 are parents of PW.1 and the deceased. PWs.4 to 9 are her relatives. They all stated on the lines as deposed by PW.1.

17. On considering the depositions of aforesaid witnesses, the learned trial Court observed that all the witnesses added certain unbelievable things in their evidence. They stated that they had given additional dowry. Figure of the amount differs from witness to witness. There is no basis to believe that payment of such huge amount as additional dowry. PW.2 stated that 10 acres of agricultural land and house in the village are only immovable properties. He is working as "vastu pandit". He has two sons in addition to one daughter. So the learned trial Court observed that it is difficult to believe that such person having given Rs.1,50,000/- as dowry at the time of marriage and had given as huge as Rs.15 lakhs thereafter.

18. It is further observed by the trial Court that most of the witnesses stated that the dead body had injuries on thighs, fingertips and knees. But PW.17-Doctor who conducted post-mortem examination on the dead body of the deceased did not notice any such injuries on these parts. During inquest report, Inspector of Police-PW.18 also did not notice any injuries on these parts. Except these two aspects the learned trial Court did not find any other considerable variations or inconsistency in the evidence of witnesses as mentioned above.

19. PWs.1 to 9 stated that the deceased came to house of her parents 10 days prior to the death. A-1 came to her

house one day before the death with promise that he would treat the deceased in a better way. So there is no evidence to disbelieve that the appellant/A-1 had not taken the deceased with him to Vemulawada one day prior to the incident.

20. In addition to above, all the prosecution witnesses, the inquest and photographs, have established that, roof the house is 10 ½ ft height. The deceased was found hanged. Her both knees were completely touching the floor. Remaining part of the legs were towards backward. As per the complaint, PW.1 received a message about death at 12.00 noon on 12.09.2011, when he was at Sirisilla. He informed immediately to his father PW.2, who was in the same village reached place of death within 15 minutes. PW.1 joined later. The FIR and complaint reached the Court on the very same day promptly at 5.00 p.m. Inquest also reached the Court on the same day at 7.30 P.M. So these circumstances give hardly any scope to create a false story or change the features at scene of offence by her parents.

21. The state of dead body says that, it was a homicide and an attempt was made to show it as suicide for the following reasons:

“Firstly : One end of her saree (Pita Kongu) was intact without pin on her left shoulder. It cannot be if it is a suicide.

Secondly : If legs or knees are accessible to floor, even a frustrated person (preparing to die) will not accept throat pain as there was chance to escape.

Thirdly : Doctor stated Hyoid bone intact. It can not normally be intact in case of suicide. As per prosecution she was pressed with a pillow on her throat to suffer asphyxia and die. So there is no associated injury on her throat. The injury i.e., ligature mark over her throat is found post-mortem."

22. It is pertinent to mention here that in suicide note i.e., Ex.P10, it states as under:

"My name is Jamuna. I have illegal contacts. So I am hanging myself. Others are not responsible for my death."

23. This slip contains thumb impression. As per the prosecution, it is written by the appellant/A-1 to save him and obtained her R.T.I. The photos show that her right thumb contains inkpad indicating that it was used for her thumb impression somewhere. Inquest also says that her right thumb contains inkpad. The circumstantial suspicion is that the thumb impression must have been taken either before her death or immediately thereafter. But Ex.P10 was not written by her for the following reasons:

"Firstly, If any lady is having illegal contacts, she continues or her stops but will not put her life end, unless it was known to public. It is nobody's case that, deceased had illegal contacts with anybody. So her own statement that she was illegal contact is unbelievable.

Secondly : Even if she has illegal contacts, she will not canvass it through a note, tarnishing her reputation and reputation of her parents a lot. So contention of prosecution that it was created by A1 to show it as a suicide appears to be true."

24. As per inquest-Ex.P4, height of the deceased is 5ft. There is no ligature mark from the ears to back. Knees of the deceased were touching the floor. As per the position of deceased, it appears that, after killing the deceased a rope was rounded over neck and tied to create it as hanging to fan. There were no injuries on the dead body of the deceased.

25. Moreover, two breasts of the deceased were appearing outside as the blouse was upside. It shows that after committing murder the appellant hanged the deceased on fan, but as held in case of **R.Rajendran Nair** case supra, it is difficult for a single man to hang a dead body. Thus he could not hang properly and knees of the deceased were touching to the floor and in the force used by the appellant/A-1 her two breasts came out from the blouse. Moreover, there was no object like stool, near dead body, which is used in hanging herself. In addition, there was no possibility of touching her knees to the floor, had she committed suicide. Ex.P8-Post Mortem report depicts that ligature Mark 'U' shaped, of 10" x ½" dimensions present around the neck – not extending upto both ears – P.M. No other external injuries present and Hyoid bone intact. Thus it proves that it is not a case of suicide but homicide.

26. In view of the discussion in Para-17 above, we are of the considered opinion that the appellant/A-1 has

erroneously been convicted by the trial Court for the offences punishable under Sections 3 and 4 of D.P. Act. Consequently, A-1 is hereby discharged from the offences mentioned above.

27. But, in view of the above discussion, we hereby maintained the conviction and sentence of A-1 for the offences punishable under Sections 302, 498-A and 201 of IPC and decline to interfere with the order of Trial Court in so far as this charge is concerned.

28. We also set aside the directions of the Trial Court that all the sentences shall run consecutively. Consequently, all the sentences shall run concurrently and remand period shall be set-off under Section 428 of Cr.P.C.

29. Accordingly, the Criminal Appeal is partly allowed.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

T. AMARNATH GOUD, J.

Date: 27 -09-2018

Note : L.R. Copy be marked
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