

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE P.KESAVA RAO

CrI.A.No.1257 of 2011

Date:20.8.2018

Between.

M.Venkatesh,
S/o M.Mani

.....Appellant

And.

M.Indra Kumar,
S/o M.Subrahmanyam and five others.

.....Respondents

Counsel for the appellant: Mr. C.Sharan Reddy

for Mrs. C.Vasundhara Reddy

Counsel for respondent Nos.1 to 5: Mr. O.Kailashnath Reddy

for Mr. K.Suresh Kumar Reddy

Counsel for respondent No.6: Public Prosecutor for the State of AP

The Court made the following:

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

This Criminal Appeal is filed by the *de facto* complainant/P.W-1 against judgment, dated 27.6.2011, in Sessions Case No.31 of 2008 on the file of the VIII Additional District and Sessions Judge (Fast Track Court), Chittoor.

The case of the prosecution is briefly stated hereunder:

Accused No.1 was the husband, accused Nos.2 and 3 were the father-in-law and mother-in-law, respectively, and accused Nos.4 and 5 were the sister-in-law and brother-in-law respectively of the deceased. P.W-1 was the father, P.W-2 was the paternal aunt, and P.Ws.3 and 4 were the close friends of the deceased. All the prosecution witnesses are the residents of Chamanthipuram, Chittoor Town.

The marriage of the deceased and accused No.1 was performed on 29.01.2007 by giving 10 sovereigns of gold and cash of Rs.25,000/- by P.W-1 to accused No.1 as dowry; that after living happily for 15 days, the accused physically and mentally harassed the deceased for additional dowry and motor cycle and demanded her to get the house of P.W-1 registered in the name of accused No.1; that on 12.4.2007, at about 3 pm., the accused killed the deceased; that immediately P.Ws.1 and 2 took the deceased to the hospital, where she was declared dead; and that thereafter P.W-1 gave Ex.P-1-report to the Police.

On 12.4.2007, at about 8 pm, on receiving Ex.P-1-report from P.W-1, P.W-11-the then Sub-Inspector of Police, Chittoor I Town Police Station, registered a case in Crime No.35 of 2007 for the offence punishable under Section-304(B) IPC and submitted express FIRs to all the officers concerned. P.W-13-the then Sub-Divisional Police Officer, Chittoor, took up the further investigation in the case, recorded the statements of P.Ws.1 and 2, visited the scene of offence on 13.4.2007 and examined the same in the presence of L.W-12-P.Payani and P.W-8, prepared a scene of offence Observation Mahazarnama-Ex.P-6 and rough sketch of the scene of offence-Ex.P-9 and recorded the statements of P.Ws.3 to 5. On receiving the requisition from P.W-13, P.W-12-Tahsildar conducted inquest over the dead body of the deceased at the Government Hospital, Chittoor, on 13.4.2007 in the presence of P.W-10 and Ex.P-7 is the inquest report. On the same day, P.W-15-Civil Assistant Surgeon, Government Hospital, Chittoor, conducted autopsy over the dead body of the deceased and opined that the cause of death was due to asphyxia due to strangulation. On 20.4.2007, accused No.1 gave extra-judicial confession before P.W-7, which was reduced into writing. Later, P.W-7 produced accused No.1 before P.W-15, who recorded his confession in the presence of L.W-16-K.Babu and P.W-14, and recovered MO-7-thali bottu and thereafter, accused No.1 lead P.W-13 to accused

Nos.2 to 5 and all of them were arrested. Based on the confession of accused No.1, P.W-13 sent Ex.P-12-requisition to the Magistrate to add Section-302 IPC. After receiving all the relevant documents and on completion of the investigation, the charge sheet was filed.

Based on the charge sheet and the material collected and placed before it by the Investigation Officer, the lower Court has framed the following charges:

“Firstly, that you A-1 to A-5 on the 12th day of April, 2007 at about 3 pm., at the house of A-1 of you in D.No.15-56, Chamanthipuram, Chittoor Town, did commit murder by intentionally causing the death of the deceased-M.Nalini by strangulating her to death with her ‘thali’ thread and that you A-1 to A-5 thereby committed an offence punishable under Section-302 IPC and within my cognizance.

Secondly, that you A-1 to A-5 on or about the same date, time and place as mentioned in charge No.1 supra, knowing or having reason to believe that certain offence to wit murder punishable with death or imprisonment for life and fine has been committed, did cause certain evidence of the said offence to disappear to wit, hanged the dead body of the deceased-M.Nalini to the ceiling of the house with a ‘paita’ and created a scene of suicide, with an intention to screen the offence and that you A-1 to A-5 thereby committed an offence punishable under Section-201 IPC and within my cognizance.

Lastly, that you A-1 to A-5 on or about the 12th day of April, 2007 at about 3 pm., at the house of A-1 of you in D.No.15-56, Chamanthipuram, Chittoor Town, caused the death of M.Nalini by demanding dowry, to get the house which is in the name of

M.Venkatesu (father of the deceased-M.Nalini) to be registered in the name of A-1 of you and a motor cycle, a gold chain and an amount of Rs.25,000/- as additional dowry and caused harassment and torture to deceased-M.Nalini. As she failed to provide the same from her parents, did commit murder by intentionally causing the death of the deceased-M.Nalini, A-1 of you caught hold of the throat of the deceased and strangled her with her Thaali thread tightening around her neck, A-2 and A-3 of you caught hold of her feet, you A-4 and A-5 caught hold of her hands till her death and the death occurred within seven years after her marriage, i.e., 29.01.2007 and that you A-1 to A-5 thereby committed an offence punishable under Section-304(B) of the Indian Penal Code and within my cognizance.”

As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 15, got Exs.P-1 to P-13 marked and produced M.Os.1 and 7. On behalf of the accused, no evidence was let in.

On appreciation of the oral and documentary evidence, the lower Court has acquitted all the accused of all the offences with which they were charged.

At the hearing, Mr. C.Sharan Reddy, learned counsel representing Mrs. C.Vasundhara Reddy, learned counsel for the appellant-*de facto* complainant, submitted that the prosecution was able to prove the offence punishable under Section-304(B) IPC, but the lower Court has erroneously acquitted the accused for the offence under the said charge. The learned counsel has

alternatively contended that as the death of the deceased took place within less than three months from the date of the marriage and in the light of the evidence of P.Ws.1 to 3, which clearly proved the dowry harassment, a presumption against the accused arises for the offence under Section-304(B) IPC.

Opposing the above submissions, Mr. O.Kailashnath Reddy, learned counsel representing Mr. K.Suresh Kumar Reddy, learned counsel appearing for respondent Nos.1 to 5/accused Nos.1 to 5, submitted that on proper and correct appreciation of the oral and documentary evidence, the lower Court has acquitted all the accused of the charges for the offences punishable under Sections-302, 304(B) and 201 IPC and that, therefore, the impugned judgment of the lower Court is not liable for interference.

We have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

Let us first examine whether the prosecution was able to prove the dowry harassment by the accused. In Ex.P-1-report given by P.W-1-the father of the deceased, he has stated that on the expiry of 15 days from the date of marriage of his daughter (the deceased) with respondent No.1/accused No.1, she was being harassed by all the accused with the demand that the house standing in the name of P.W-1 shall be transferred in the name of accused No.1; that in spite of his trying to convince the

accused that since he has only one daughter, the accused will succeed to the said property, the latter did not change his attitude; that two days prior to the date of the incident, the deceased came to his house crying and informed him that the accused have been demanding motor cycle, gold chain and additional dowry of Rs.25,000/-; that all the accused have severely beaten up her as she has not brought the afore-mentioned items; and that they threatened to kill her if she does not bring those items. He further stated that at about 11 am on the date of occurrence, the deceased went to the house of P.W-2-his sister and informed her that all the accused have beaten her and threatened to kill her if she does not bring the afore-mentioned items. P.W-1 also stated in Ex.P-1-report that at about 3 pm., on the day of occurrence, when there was a commotion at the house of the accused, he and his relatives went there anxiously and that, by that time, all the accused have severely beaten the deceased and hanged her.

In his evidence given as P.W-1, the appellant while reiterating the allegations of harassment for dowry by the accused made in Ex.P-1-report, stated that on 12.4.2007 (the day of occurrence) at about 12 or 12.30 pm., his daughter (the deceased) came and informed him that the accused were harassing and beating her for the house property and that he has convinced her that he would make some arrangements

within one week and sent her to the house of the accused. The lower Court has given due weight to this material discrepancy between the stand taken by P.W-1 in Ex.P-1-report and as deposed by him before the Court as P.W-1. As rightly observed by the lower Court, this variation is material in order to judge the veracity of the witness.

Further, P.W-2 is no other than the paternal aunt of the deceased (sister of P.W-1) and P.W-3 is also closely related to the deceased and her family. All these witnesses have made a parrot-like repetition of the alleged harassment of the deceased by the accused. Though P.W-4 is not related to the family of the deceased, her evidence is hearsay as, she claimed that it is only the deceased who informed her about harassment for dowry and that, she has no personal knowledge of the same. P.W-5, who is not related to the family of the deceased, also spoke about the alleged harassment by the accused. She admitted that she lost in the election for Councillor contesting for Congress party. It was suggested to her that as the accused belonged to TDP and did not support her, she is deposing against them. This suggestion, of course, was denied by her. She also admitted that P.W-1 was complaining of harassment by the accused. She further stated that she did not advise P.W-1 to lodge a report in the Police Station to set right the things.

Even if the evidence of P.Ws.4 and 5 deserves some weight to be given, Ex.P-13-Post-mortem report, as spoken to by P.W-15-doctor, who held post-mortem over the dead body of the deceased, reveals that there were no external injuries on the body of the deceased. If the version of P.Ws.1 and 2 about the harassment of the deceased and the assaults on her by the accused for not bringing additional dowry were true, there would have been some injuries on the body of the deceased. Absence of these injuries also casts a serious doubt on the veracity of the prosecution witnesses.

We have, therefore, no hesitation to hold that the prosecution failed to bring home the charge of dowry harassment, thereby, ruling out the commission of offence punishable under Section-304(B) IPC by the accused.

As regards the medical evidence, on which strong reliance has been placed by the learned counsel for the appellant, P.W-15-doctor has opined that the death of the deceased was due to asphyxia due to strangulation that occurred between 18 to 24 hours prior to the post-mortem examination. In the cross-examination, P.W-15 explained that strangulation means thread-like object encircling the neck and causing death; that to cause death by strangulation by encircling the neck with a thread-like object, one has to tighten the thread by pulling both ends in opposite direction and it causes ligature marks around

the neck. He further admitted that he did not find ligature marks around the neck of the body of the deceased; that they were only found on the back side of the neck and just below the chin, as per Ex.P-13; and that he also did not find fracture of hyoid and thyroid bones.

Dealing with the medical evidence, the lower Court held as under:

“In the cross-examination, the witness admitted that the strangulation means using thread-like object encircling the neck and tightening it by pulling with the both ends in opposite direction and it causes ligature marks around the neck and he had admitted that they did not find such ligature marks around the neck and they found only ligature marks on the back of the neck and just below the chin. Similarly, when they opened the dead body, they found hyoid bone normal and it was not fractured. In the cross-examination, this witness admitted that in a case of throttling, there must be compulsory fracture of hyoid bone. The internal examination of the dead body revealed that both the arms of thyroid cartilage are normal. But, its body is fractured. As per the evidence of P.W-15 himself, since ligature marks are not found around the entire neck, strangulation is ruled out and since there is no fracture in the hyoid bone, throttling is also not possible. According to the prosecution, the deceased was murdered by strangulation. But, the medical evidence reveals that the cause of strangulation is not proved. Thus, the medical evidence does not support the prosecution and it is quite against the contents in Ex.P-5 and further Ex.P-5 is uncorroborated and further it appears that it is not recorded in the presence of A-1.”

It is trite law that in an appeal arising out of acquittal, where two views are possible, the appellate Court will not reverse the judgment of the trial Court by adopting another possible view. (*See S.Ramakrishna Vs. S.Rami Reddy*¹ and *Chandrappa Vs. State of Karnataka*²).

No medical literature is produced before us by the learned counsel for the appellant to overturn the view taken by the lower Court as regards the medical evidence. In the absence of such overwhelming evidence, we are of the view that it is not possible for us to interfere with the impugned judgment of the lower Court even if the medical evidence gives rise to a strong suspicion of a case of murder. The law is well settled that howsoever strong suspicion may be, it shall not have the place of proof.

In the light of the above discussion, we do not find any reason to interfere with the impugned judgment of the lower Court and the Criminal Appeal is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE P.KESAVA RAO

20th August, 2018

DR

¹ AIR 2008 SC 2066

² 2007 (4) SCC 415