

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.229 of 2012

JUDGMENT (Per Dr.Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 06.02.2012, passed in S.C.No.308 of 2010 by the II Additional Sessions Judge (Fast Track Court), Khammam, whereby, the Court below convicted the accused of the offence punishable under Section 302 of I.P.C. and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.500/- and to undergo simple imprisonment for three months, in default.

2. Heard the submissions of Smt. C.Vasundhara Reddy, learned Legal Aid counsel appearing on behalf of the accused, learned Additional Public Prosecutor representing the respondent-State and perused the record.

3. The learned Legal Aid counsel appearing on behalf of the accused would contend that the Court below relied on circumstantial evidence and convicted and sentenced the accused. There is no circumstantial evidence to believe the guilt of the accused for the offence punishable under Section 302 of I.P.C. It is also contended that the subject death is not homicidal. There is no evidence to prove that the subject death is homicidal. It is only a suicidal death. There is no cogent and convincing evidence

to find the accused guilty of the offence punishable under Section 302 of I.P.C. The Court below erred in relying on the evidence of P.Ws.6, 7, 9 and 11. P.W.4 did not support the case of the prosecution. Ex.P.6 – confessional statement is of no use to the prosecution case. The evidence of P.W.8 and P.W.11 is contradictory. The accused is in no way connected with the death of the deceased and ultimately prayed to set aside the conviction and sentence recorded against the accused for the offence punishable under Section 302 of I.P.C.

4. The learned Additional Public Prosecutor representing the respondent-State would submit that there is cogent and convincing evidence to prove the guilt of the accused for the offence under Section 302 of I.P.C. The subject death is homicidal. The accused has caused the subject death suspecting the fidelity of the deceased, who is his wife. There is ample evidence on record to prove the guilt of the accused and ultimately prayed to dismiss the Criminal Appeal by confirming the conviction and sentence imposed against the accused by the Court below.

5. In view of the above contentions put-forth by both the learned counsel, the points that arise for determination in this Criminal Appeal are:

- (1) Whether the death of the deceased Nurjahan is homicidal?
- (2) Whether the accused has caused the death of the deceased Nurjahan ?
- (3) Whether the conviction and sentenced recorded against the accused by the Court below is liable to be set aside ?

6. The case of the prosecution is that the accused married Nurjahan (the deceased herein) on 13.05.2009. Thereafter, he started suspecting the fidelity of the deceased. Since the date of marriage, there were quarrels between the accused and the deceased. On 25.02.2010, the accused picked up a quarrel with his wife (deceased) questioning the arrival of one Kumar to Padmagudem area, and beat her on various parts of the body. On the same day between 11:00 and 11:30 PM, the accused tied the mouth of the deceased with a petticoat cloth, hands with plastic wire, legs with plastic tape and strangled her with a telephone wire and with a blouse suspecting her fidelity. Later, he tied a saree and hanged the body to wooden pole of his hut to make people believe that the deceased committed suicide. On a report lodged by P.W.1 (adopted father of the deceased), the police registered the crime, investigated into and filed Charge-sheet before the Magistrate concerned. The learned Magistrate, has taken cognizance and committed the case, vide P.R.C.No.16 of 2010 to Sessions Division, Khammam, under Section 209 Cr.P.C., since the offence under Section 302 I.P.C. is exclusively triable by the Court of Session. On committal, the learned Sessions Judge, Khammam, registered the case as S.C.No.308 of 2010 for the offences under Sections 498A and 302 of I.P.C. and made over the case to the Court below for disposal in accordance with law. The Court below framed charges under Sections 498A and 302 of I.P.C. against the accused, read over to the accused for which, he pleaded not guilty and claimed to be tried.

7. To prove the case of prosecution, P.Ws.1 to 11 were examined and Ex.P.1 –report given by P.W.1, Ex.P.2 – 161 Cr.P.C. statement of P.W.4, Ex.P.3 – Crime details Form marked through P.W.5, Ex.P.4 – Inquest panchanama marked through P.W.6, Ex.P.5 – Crime details Form No.2 marked through P.W.6, Ex.P.6 – Confessional Statement marked through P.W.8, Ex.P.7 – Seizure Panchanama marked through P.W.8, Ex.P.8 – Post Mortem Examination Report marked through P.W.9, Ex.P.9 – Bunch of (6) photographs along with CD marked through P.W.10, and Ex.P.10 – First Information Report marked through P.W.11, were marked. M.O.1 – Red Pettycoat, M.O.2 – White Plastic tape, M.O.3 – Blue and White colour plastic wire, M.O.4 – Pink colour Blouse and M.O.5 – Black colour telephone wire were also marked.

8. When the accused was confronted with the incriminating material appearing against him and examined under Section 313 of Cr.P.C, he denied the same and contended that he is falsely implicated in the case. No oral and documentary evidence has been adduced on behalf of the accused.

9. P.W.1 – Sk.Imam is the adopted father of the deceased. He deposed that the deceased is the daughter of his brother Late Vazir and after the death of Vazir, he adopted the deceased. The marriage between the accused and the deceased was performed five years prior to the date of his deposition. In marriage, the accused was given Rs.30,000/- towards dowry and other household articles. The accused and the deceased lived happily

for one year and they were blessed with a female child. Thereafter, the accused started harassing the deceased suspecting her fidelity. Panchayats were held before elders to resolve the disputes between the accused and the deceased and the accused was advised to live the house of P.W.1. Then, the accused and the deceased lived in the house of P.W.1 for six months. Thereafter, the accused took away the deceased promising that he would look after her well. On 25.02.2010 at 10:00 AM, he received a phone call from the accused that the deceased committed suicide by hanging. Immediately, he rushed to the house of the accused at Padmagudem. In the meantime, the accused along with his family members shifted the deceased to a private nursing home at Manugur. When he reached the Nursing Home, he saw the deceased lying on the bed with injuries on the neck and chest. On the next day morning, he lodged a report with the police. Police started investigation after registration of crime, recorded the statements of witnesses.

10. As seen from the entire material on record, admittedly, there are no eye-witnesses to the alleged incident. In view of the contention raised by the learned Legal Aid counsel appearing for the accused that the subject death is not homicidal, it is apt to refer the evidence of P.W.9, the doctor who conducted autopsy over the dead body of the deceased on 26.02.2010 around 12:55 PM. He found the following external and internal injuries on the dead body of the deceased.

External Injuries

- i. Contusion of 12cm x 2mm in front of the neck which is discontinuous.

- ii. Irregular contusion mark of 14cm in parallel to the above injury which is also discontinuous.
- iii. Abrasion of 3cm x 2cm x 2mm, 1.5cm x 2mm along with above contusion mark.
- iv. Contusion of 5cm x 3cm on the inner side of right thigh.
- v. Contusion of 4cm x 2.5cm, 7cm x 2.5cm and 2cm x 3cm sized in triangle shape present on the inner side of left thigh.
- vi. Contusion of 12cm x 8cm x 14cm on the outer side of left breast.

Internal injuries

- i. Hyoid bone intact. No fracture found.
- ii. Contusion or bruise corresponding to the contusion mark of external injuries 1 and 2.
- iii. Stomach contains semi digested food particles.
- iv. Lungs congested.
- v. Uterus empty.
- vi. Urinary bladder empty.
- vii. Other internal organs congested.

11. Ex.P.8 is the Post Mortem report issued by P.W.9/Doctor, which corroborates with his deposition. There is specific evidence of P.W.9 that the deceased died 12 to 24 hours prior to the post-mortem examination. In the cross-examination of P.W.9/doctor, it was tried to elicit that nature of the death of the deceased was suicidal death. In the case of hanging, there would be no knot mark over the neck. No such knot mark was found on the body of the deceased in the instant case. P.W.9 also denied that the subject death is suicidal. In his cross-examination, there is specific mention that the external injuries 1 to 6 are ante-mortem injuries. Admittedly, there is no fracture of thyroid cricoid. In most of the cases, fracture is possible to the thyroid crocoid in case of hanging. In the instant case, there is no such fracture of thyroid crocoid. It has also come to light in the evidence of P.W.9/doctor that the injuries found on the dead body of the deceased are ante-mortem injuries. As per the cross-examination

of P.W.9-Doctor, external injuries 1 to 6 are not possible when the deceased was shifted to private hospital for treatment. Those injuries are not possible when the dead body was shifted in a vehicle for post-mortem.

12. In support of her contentions, the learned Legal Aid Counsel appearing on behalf of the accused had relied on a decision of a Division Bench of this Court in Gaddegudem Vadenna Vs. State of Andhra Pradesh¹. In the cited case, the accused was not present at the time of subject death and the case was based on circumstantial evidence. Further, the injuries found on the dead body of the deceased in the cited case are different from the injuries found on the dead body of the deceased in the instant case. In the cited case, the Division Bench of this Court was of the opinion that when two views are possible, the benefit of doubt has to be given to the accused.

13. The learned Legal Aid counsel appearing on behalf of the accused also relied on the decision of this Court in Rajulapadu Rambabu Vs. State of Andhra Pradesh², wherein, the deceased succumbed to the burn injuries. It was a case of burning. Death by burning can be homicidal or suicidal. Accused suffered burn injuries and contended that he tried to rescue the deceased. In those circumstances, this Court extended the benefit of doubt to the accused. The facts and circumstances of the case on hand are quite different from the cited decision.

¹ 2011 (1) ALD (Crl.) 759 (AP)

² 2011 (1) ALD (Crl.) 527 (AP)

In the instant case, there is clear and ample medical evidence and also circumstantial evidence to believe that the death of the deceased is homicidal. Two views are not possible in the instant case so as to extend the benefit of doubt to the accused. The accused was very much present at the time of incident. He did not explain as to how the injuries were caused on the dead body of the deceased. Further, there is also evidence of the other witnesses that the accused tried to project the subject death of the deceased as a suicidal death.

14. The accused had not given any explanation and did not rebut the circumstances appearing against him by leading any cogent and convincing evidence. As per Section 106 of the Indian Evidence Act, 1872, the accused is required to explain the facts within his knowledge. Section 106 of the Evidence Act reads as follows:

"106. Burden of proving fact especially with knowledge – When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him
illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

The Apex Court, in State of M.P. Vs. Ratan Lal³, held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. In the instant case, the accused

³ AIR 1994 SC 458

did not explain the circumstances appearing against him. Moreover, he denied the case of the prosecution and contended that the subject death is a suicidal death. Though the instant case is based on circumstantial evidence, there is ample evidence on record, which clinchingly establishes the guilt towards the accused. As already stated, no two views are possible in the instant case so as to give benefit of doubt to the accused. The circumstances appearing against the accused are conclusive in nature leading to an only conclusion that the accused has caused the death of the deceased, who is his wife, suspecting her fidelity. There is nothing to hold that the accused is an innocent person and he did not cause the death of the deceased. There was no possibility for any person to cause the subject death. The deceased and the accused were living together. After strangulation to death, the accused tried to depict the subject death as suicidal. The Court below, having appreciated the entire evidence on record, rightly found the accused guilty of the offence punishable under Section 302 of I.P.C. There is nothing to take a different view. All contentions raised on behalf of the accused do not merit consideration. The Criminal Appeal is devoid of merit and is liable to be dismissed.

15. In the result, the Criminal Appeal is dismissed confirming the judgment, dated 06.02.2012, passed in S.C.No.308 of 2010 by the II Additional Sessions Judge (Fast Track Court), Khammam. The accused was released on bail by this Court by order, dated 05.06.2017, passed in Crl.A.M.P.No.708 of 2017. Since this Criminal Appeal is dismissed confirming the conviction

and sentence recorded against the accused by the Court below, the accused is directed to surrender before the Court below forthwith to serve the remaining period of sentence. If the accused fails to surrender before the Court below, the Court below is directed to issue Non-bailable warrant against the accused and take consequential measures.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

P.NAVEEN RAO, J

Dr. SHAMEEM AKTHER, J

21st April, 2018
Bvv

