

**HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**CRIMINAL APPEAL No.315 of 2013**

**JUDGMENT** : (Per Hon'ble Sri Justice Abhinand Kumar Shavili)

This is an appeal by the *de facto* complainant against the judgment of the learned Metropolitan Sessions Judge, Hyderabad, in Sessions Case No.20 of 2011, whereby, the 2<sup>nd</sup> respondent/accused was acquitted of the charges for the offences under Sections 302 and 201 of IPC.

2. The allegations on the basis of which charges were framed against the 2<sup>nd</sup> respondent/accused were that on 13.11.2011, at about 15.00 hours, he committed murder of his wife Smt.G.Hemalatha, by strangulating her with a saree and that he tried to screen himself by trying to dispose of the body of the deceased without intimating to the Police.

3. Accordingly, charges were framed under Sections 302 and 201 of IPC, to which, the accused pleaded not guilty and claimed to be tried. Prosecution examined 14 witnesses and exhibited 7 documents and 1 material object.

4. PW-1 is the *de facto* complainant and is the father of the deceased. He deposed that they performed the marriage of deceased with the accused in March, 2000. After 8 years of marriage also, the accused and deceased used to quarrel and one of the reasons was that

the deceased was issue-less. On 13.11.2009 at about 4.30 p.m., the accused telephoned to him and informed that his daughter was in serious condition and asked him to come. PW-1, his wife and his another daughter went there within one hour and on reaching there, they noticed that people gathered in front of the house of the accused and the dead body of his daughter was lying in the house and it was wrapped with cloth and a garland was placed around the neck and turmeric paste was also applied to the dead body. On the next day morning at 5.30 a.m., he saw some marks on the neck of the deceased. He further deposed that the accused demanded his daughter to bring Rupees One lakh for the purpose of the marriage of the sister of accused, but he refused to give that amount and gave only Rs.20,000/-. The witness suspected that the accused might have killed the deceased as he did not pay the amount demanded by the accused and also as the deceased did not bless with children. He lodged a complaint to the Police in Ex.P-1 on the next day. He could not give the complaint on the date of death of his daughter, as he is heart-patient.

In the cross-examination, he deposed that he gave an application to Harijana Seva Sangham, Medchal for return of marriage articles from the accused. One Satyanarayana was the Secretary of the said Sangham. He admitted that in the said application, he mentioned that there were no disputes between his daughter and the accused and they lived happily. He also admitted that in the complaint to the Police and in his 161 Cr.P.C. statement, he did not

mention about the demand of Rupees One Lakh for the marriage of the sister of accused, by the accused. He did not state to Police that he suspected the accused to have committed murder of his daughter as he did not pay the amount demanded by the accused. He took his daughter to hospital as she did not get children even after 5 or 6 years of marriage and his daughter used to take medicines for getting children. He denied the suggestion that his daughter suffered stomach pain as she took many medicines. He has also denied the suggestion that the accused never harassed his daughter for not getting children and that the accused did not demand for any amount and that he gave false complaint against the accused.

5. PW-2 deposed that the accused and deceased are his neighbours. On 13.11.2009 in the afternoon, the accused called the witness to his house. In the said house, he found that the wife of accused Hemalatha was hanging to a wooden beam with a saree and the accused caught hold of her and untied the knots of the saree and made her lay on the bed sheet. The accused asked him to bring the Doctor. Then he went out, but as the Doctor was not available, he returned and informed the same to the accused. Then the accused asked him to bring his mother and by that time, public gathered there. They took the deceased to Apollo hospital, where, Doctors declared the deceased dead. M.O.1 is the saree with which the deceased was hanged to the wooden beam. He informed about the incident only to

his parents, but not to anybody else, as the accused asked him not to tell anybody.

During cross-examination, he deposed that after loosening the saree, he brought the deceased out and then, the accused tried to save her life by pressing on her chest, and that, by that time, he did not know whether the deceased died or not.

6. PW-3 is the father of PW-2. He deposed that about two years prior to his deposition, the accused went to their house and took PW-2 into the house of accused and later PW-2 informed him that the wife of accused was hanged to a beam in their house and that he untied the knots of the saree and laid the body on the floor. This witness was not cross-examined.

7. PW-4 is the mother of the deceased. She deposed that they performed the marriage of deceased with the accused about 11 years back. There were disputes between the accused and the deceased as the deceased could not give birth to children and her daughter told them that the accused wants to marry another girl. On that, her husband/PW-1 pacified the matter. The accused demanded Rupees One Lakh for the marriage of his sister, but PW-1 gave Rs.20,000/- to the mother of the accused. About 2 years ago, on one day at about 3.30 p.m., when herself and PW-1 were at their relatives' house at Saroornagar, accused telephoned to PW-1 and informed that their daughter was in serious condition and asked them to come immediately. Then, herself and PW-1 went to the house of accused at

4.30 p.m. They found their daughter/Hemalatha was lying on the bed and her entire body was covered with saree. Accused informed them that the deceased got giddiness and fell down and that she was in serious condition. On the next day morning, they found some marks on the neck of the deceased and on suspicion that the accused caused the death of their daughter, they complained to the Police.

In the cross-examination, she deposed that she was present in the Court when her husband deposed in the Court and she had heard his deposition. Police did not go to the house of the accused on the death of the deceased. She denied the suggestion that she did not state to Police about her daughter informing them that the accused threatened to marry another girl if her daughter did not give birth to children. She also denied that she did not state to Police that the accused demanded Rupees One Lakh for the marriage of his sister. She further denied the suggestion that she did not state before the Police that when they went to the house of accused, she found her daughter wrapped with a cloth and was lying on bed. She stated that her daughter used to take medicines for getting children. She denied that due to heavy consumption of medicines, the deceased lost her health and went into depression as she could not give birth to children.

8. PW-5 is the younger sister of the deceased/Hemalatha. She deposed that on 13.11.2009, her father/PW-1 received a telephone call from the accused stating that her sister/Hemalatha was in serious condition and asked them to come. On that, herself and PWs.1 and 4

went to the house of accused at about 6.30 p.m. By the time they reached, the body of her deceased sister was wrapped with a cloth and a garland was placed around her neck. On the next day morning, when the accused and others were preparing for performing the final rites of deceased, they noticed some black marks on the neck of the deceased and thought that her sister might have been killed. Then, her father lodged complaint.

In her cross-examination, she denied the suggestion that she did not state to Police that the dead body of deceased was wrapped with cloth and was lying on bed sheet. She also denied the suggestion that she did not state to the Police that they found marks on the neck of the dead body when the accused was preparing for final rites of her sister. She further denied the suggestion that as her sister died, they are trying to implicate the accused in this case.

9. PW-6 is the classmate of the deceased/Hemalatha and she knows the accused. She deposed that now and then she used to go to the house of deceased/Hemalatha. The deceased was not blessed with children for about 4 years. The deceased used to tell her over phone that her in-laws and husband used to comment that she was dark in complexion and that she had to attend the entire household work. About three days prior to the incident also, the deceased spoke to her over phone in the morning and evening and asked for an amount of Rs.20,000/-. She gave that amount to the deceased, as the deceased wanted to give that amount for performing the marriage of her

sister-in-law. The witness deposed that she gave that amount directly to the mother-in-law of the deceased and opined that the deceased might have died due to some financial problems.

In the cross-examination, she deposed that on the date of death of deceased, she went to the house of accused. She denied the suggestion that she did not state to Police that she was in touch with the deceased for 3 days prior to the incident and that the deceased used to tell about her financial problems. She also denied the suggestion that she did not tell Police that she had given Rs.20,000/- to the mother-in-law of the deceased. She denied the further suggestion that she did not state before the Police that the sister of accused used to ill-treat the deceased saying that the deceased was dark in complexion and they would not have intended to marry her with the accused. She denied the suggestion that she did not state before the Police that the accused demanded the deceased to get Rs.20,000/- and on that, the deceased took a loan of Rs.20,000/- from her. She denied the suggestion that the deceased never informed her about the harassment made by the accused and that she never paid Rs.20,000/- and that she was deposing falsehood as the deceased was her friend.

10. PW-7 is the neighbour of accused. He deposed that about two years back, on one day, he returned home from office at about 3.30 or 4.00 p.m. Then, he found a gathering in front of the house of accused and one auto came there and took the deceased to Apollo hospital. He

too accompanied them. The Doctor declared the deceased dead. Accused told him that the deceased fell down due to giddiness and died.

In the cross-examination, he denied the suggestion that he did not state to Police that he accompanied the accused and deceased to the hospital and also denied the suggestion that the accused did not tell him that due to giddiness the deceased fell down and died.

11. PW-8 is the neighbour of accused. She deposed that on the date of incident, when she was watching TV, the accused called her son and again went to her and told that Hemalatha was hanging to a beam. She went there to see the deceased and found a gathering in front of the house of accused. She stated that she was not present at the time of conducting inquest panchanama by the Police. Police obtained her signature on the panchanama/Ex.P-2. She does not know the cause of death of deceased.

This witness was declared hostile and cross-examined by the Public Prosecutor. She denied the suggestion that her son told her that the accused asked him to untie the saree knot hanging in the neck of the deceased and he had untied the knot and laid the dead body on ground and that the accused had asked her son to get the doctor and that the accused also threatened her and her husband not to tell about hanging of deceased and in the meantime, public gathered there and accused told that his wife fell down due to giddiness and died. She denied that the Police conducted inquest in her presence and that she

opined that the deceased died due to hanging and that she is deposing falsehood, as the accused is her neighbour.

In the cross-examination by the defence counsel, she deposed that the Police did not enquire any witness during inquest panchanama.

12. PW-9 deposed that the Police conducted inquest panchanama under Ex.P-2 in her presence and she signed the same. The panchas opined that the accused strangled the deceased.

In her cross-examination, she deposed that the Police informed her that the deceased was strangled by her husband and she stated the same fact in the panchanama. She denied the suggestion that she is deposing falsehood since the deceased is her relative.

13. PW-10 is also the neighbour of accused. He deposed that during the year 2009, on one day, he was called to the house of accused along with one Raju to act as panchas for observation of scene of offence and confession of accused. Police conducted scene of offence panchanama in their presence under Ex.P-3, which contains his signature. The saree/M.O.1 was shown to him by the Inspector. M.O.1 was seized by the Police in his presence at the instance of accused. Ex.P-4 is the admissible portion of panchanama and Ex.P-5 is the seizure report.

In the cross-examination, he denied the suggestion that at the instance of Police, he signed the panchanama at the Police Station and that no panchanama was conducted in his presence and that he never

visited the scene of offence and nothing was seized from the accused. He also denied the suggestion that the accused did not confess anything before him and that he was a stock witness to the Police.

14. PW-11 deposed that on 14.11.2009, Police called him and PW-10 to the house of accused to act as panchas for observation of scene of offence, where, they observed the scene of offence and scene of observation panchanama was drawn in their presence and rough sketch of the scene of offence was also drawn in their presence. Ex.P-3 is the scene of offence panchanama. He stated that on 13.11.2009, Police called him and PW-10 to act as panchas for confession of accused. Police recorded the confessional statement of accused and seized M.O.1/saree in the Police Station itself from the possession of accused.

This witness was declared hostile and cross-examined by the Public Prosecutor. In his cross-examination, he denied the suggestion that on 02.12.2009 at 8.30 a.m., Police called him and PW-10 to the Police Station and the accused was in the custody of Police and confessed about the crime and further promised to show the saree with which he killed his wife and confessed that he kept the same in his house and later, the accused led them to his house and shown M.O.1/saree and it was recovered at the instance of accused. Ex.P-4 is the admissible portion of confession of accused, Ex.P-5 is the seizure report for seizure of M.O.1. He denied that he was deposing falsehood.

15. PW-12/Assistant Professor, Department of Forensic Medicine, Gandhi Medical College, Secunderabad deposed that on 14.11.2009, on receiving requisition from SHO, P.S.Karkhana, he conducted autopsy over the dead body of G.Hemalatha and found the following injuries :

1. *“Antimortem ligature mark of 22 X 2 cm over front of neck above the level of thyroid cartilage extended upwards, backwards to the back of the neck.*
2. *Knot impression 3 X 2 cm on left side of neck below angle left mandible.*
3. *Thyroid cartilage fractured on right side of neck.*
4. *Hyoid bone normal and intact.”*

He deposed that the post-mortem examination concluded at 4.30 p.m. on 14.11.2009 and that the approximate time of death was 12 to 24 hours prior to post-mortem examination. The cause of death was due to hanging and that it could have been resulted by hanging with a saree like M.O.1. He issued Ex.P-6/postmortem examination report.

16. PW-13 is the Gas delivery boy. He deposed that about two years ago, on one day at 1.00 p.m., he went to the house of accused and delivered HP Gas cylinder and obtained amount from the wife of accused. After two days of the death of the wife of accused, he was called to the Police Station and was enquired about delivery of gas. He stated the same before the Police and Police recorded his statement.

In the cross-examination, he deposed that he learnt that the husband of deceased informed everybody that the deceased had committed suicide. He informed the Police about the said fact.

17. PW-14/Inspector of Police, P.S.Karkhana deposed that on 14.11.2009 at 12.00 hours, on receiving Ex.P-1 from PW-1, he registered a case in Crime No.251 of 2009 under Section 302 of IPC and issued FIR/Ex.P-7. Then he took up investigation, examined and recorded the statement of PW-1 in the Police Station, visited scene of offence at the house of accused, conducted scene of offence panchanama/Ex.P-3 in the presence of PWs.10 and 11, recorded the statements of witnesses, conducted inquest over the dead body in the presence of panch witnesses, sent the dead body to Gandhi Hospital for post-mortem examination. On production of accused before him on 02.12.2009, he interrogated him and as the accused wanted to confess about the offence, he secured the panch witnesses and recorded confession panchanama of accused under Ex.P-4. Accused produced M.O.1/saree from his house and it was seized under Ex.P-5. After completion of investigation, he filed charge sheet.

In the cross-examination, the witness deposed that PW-1 did not state that the accused demanded Rupees One Lakh for the marriage of his sister. PW-4 did not state in her 161 Cr.P.C. statement that her daughter informed about the accused threatening to contact another marriage, if the deceased does not give birth to a child and that the accused demanded Rupees One Lakh for the marriage of his

sister. PW-4 also did not state that the deceased was wrapped in a cloth by the time she went there. He further deposed that PW-5 did not state that the deceased was wrapped in a cloth and that the accused was preparing for funeral. PW-6 did not state that the deceased was in touch with her for three years prior to the death of deceased and that the deceased told about her financial problems and that the sister of the accused ill-treated the deceased as she was dark in complexion. He denied the suggestion that he foisted a false case against the accused at the instance of PW-1 and his family members and that M.O.1 was not recovered at the instance of accused.

18. Heard learned counsel for the parties and perused the material on record.

19. PW-1/the *de facto* complainant and father of the deceased, and PW-4, who is the mother of the deceased, were not present at the scene of offence at the time of occurrence. It was only on the suspicion of PWs.1 and 4, the accused was tried for the offences under Sections 302 and 201 of IPC. Some of the independent witnesses examined by the prosecution such as PWs.2 and 3, who were none other than the neighbours of the accused and the deceased, did not speak anything about quarrellings between the accused and the deceased. They also did not speak about the accused harassing the deceased for additional dowry and that the accused might have killed the deceased as she failed to fulfil his demand for additional dowry. If at all there were any quarrels between the accused and the deceased,

PWs.2 and 3, being their neighbours, must definitely have knowledge about such quarrels, but they did not speak anything about such quarrels. Even PW-1 did not state before the Police that the accused had demanded Rupees One Lakh and as they failed to pay the said amount, the accused killed the deceased. PW-4 was present in the Court when PW-1 was deposing, and in her deposition, PW-4 has reiterated the very same facts as deposed by PW-1.

20. The learned counsel appearing for appellant has relied upon the judgment rendered by the Hon'ble Supreme Court in **Vijay Kumar Arora v. State Government of NCT of Delhi**<sup>1</sup> in support of his contention that the evidence of PWs.1 and 4 cannot be rejected when it is not found to be suffering from inherent improbabilities. He contended that in the instant case, PWs.1 and 4 have noticed certain marks on the neck of the deceased, and therefore, they had every suspicion that the accused had killed the deceased and based upon the evidence of PWs.1 and 4, the judgment of acquittal rendered by the lower Court be reversed and the accused be convicted for the offences under Sections 302 and 201 of IPC.

21. The learned counsel for appellant has also relied on another judgment of Hon'ble Supreme Court in **Dilpesh Balchandra Panchal v. State of Gujarat**<sup>2</sup> in support of his contention that based on the

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<sup>1</sup> [2010] ACR 368

<sup>2</sup> 2010 AIAR (Criminal) 637

evidence of PWs.1 and 4, the trial Court must have convicted the accused.

22. The argument of learned counsel for appellant cannot be accepted, because the trial Court has considered all these aspects and rendered the judgment in favour of the accused acquitting him of the offences under Sections 302 and 201 of IPC. The material placed before us and also the arguments advanced by the learned counsel for appellant do not make out any irregularity or illegality in the judgment of the trial Court so as to reverse the findings of acquittal recorded by the trial Court.

23. Therefore, this Court is of the considered view that the trial Court has rightly acquitted the accused with a specific finding that the prosecution has proceeded with the case on mere suspicion of the *de facto* complainant and other witnesses.

24. There are no merits in the appeal and it is accordingly dismissed. The judgment, dated 22.02.2012, of the trial Court in Sessions Case No.20 of 2011 is confirmed.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

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**SANJAY KUMAR, J**

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**ABHINAND KUMAR SHAVILI, J**

20<sup>th</sup> March 2019  
ajr