

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL NO.700 OF 2014

JUDGMENT: { Per Hon'ble the Chief Justice Raghvendra Singh Chauhan }

The appellant, Vemula Kanukaiah (A-1), has challenged the legality of the judgment dated 30.01.2014, passed by the VI Additional District and Sessions Judge at Godavarikhani, whereby the learned trial Court has convicted and sentenced the appellant as under:

Offence convicted for	Sentence imposed
Section 302 IPC	Undergo imprisonment for life, to pay a fine of Rs.500/-, and suffer rigorous imprisonment for one year in default thereof.
Section 449 IPC	Undergo rigorous imprisonment for one year, to pay a fine of Rs.500/-, and to suffer rigorous imprisonment for three months in default thereof.
Section 3 of Dowry Prohibition Act	Undergo rigorous imprisonment for one year, to pay a fine of Rs.500/-, and to suffer rigorous imprisonment for three months in default thereof.
Section 4 of Dowry Prohibition Act	Undergo rigorous imprisonment for one year, to pay a fine of Rs.500/-, and to suffer rigorous imprisonment for three months in default thereof.

All the substantive sentences were directed to run concurrently. However, A.2 and A.3, parents of the appellant-A.1, were acquitted of offences under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act.

Briefly, the facts of the case are that on 08.08.2011, around 10:25 a.m., Kunta Mallamma (P.W. 1) submitted a report (Ex. P.1) at the Kamanpur Police Station wherein she stated that *“she is a resident of Kalvacherla(v) and she performed the marriage of her younger daughter, Rajeshwari with Vemula Kanakaiah, S/o. Lingaiah, 35 years, Padmashali of the same village i.e. Kalvacherla on 14.02.2004. Towards dowry, gave away one lakh rupees, one Acre of land and one tiled house. As she has four daughters, she brought her younger son-in-law i.e. Vemula Kanakaiah on “ILLARIKAM” (A son-in-law who lives with his own in-laws). Vemula Kanakaiah and Rajeshwari have one five years old daughter, Soni, and three years old son, Aruna Kumar. Her son-in-law and his parents used to harass and ill-treat them as well as her daughter both mentally and physically demanding for additional dowry amount. On that, a panchayat was held and the elders advised them to live separately from her son-in-law. Accordingly, they are staying in a rented house. Even then, her son-in-law came to her rented house, beat her husband due to which her husband was injured and underwent a surgery and took treatment at Osmania Hospital, Hyderabad for two months. Then, a case was also put up at Kamanpur Police Station against her son-in-law. Her daughter informed her that for the past four months, her son-in-law came to the house in a drunken condition and used to harass her demanding to get money from her husband who was then*

retired from service. Her son-in-law and his parents tortured her daughter and on 07.08.2011 at about 10:30 a.m., the neighbour of her daughter, namely Thirupathamma telephoned her and informed that her daughter consumed some poison. When they rushed her to Peddapalli hospital found that her daughter was dead. She stated that her son-in-law and his parents killed her daughter administering poison demanding additional dowry amount.”

On the basis of the said report, the police registered FIR No.115 of 2011 (Ex. P.10) for the offences under Sections 302, 498-A IPC, and under Sections 3 and 4 of Dowry Prohibition Act. The investigation commenced. While the appellant was arrested on 19.08.2011, accused Nos.2 and 3, the parents-in-law of Vemula Rajeshwari (hereinafter referred to as ‘the deceased’) were arrested on 02.09.2011. They were put up for trial.

In order to support its case, the prosecution examined fourteen witnesses, submitted eighteen documents, and produced one material object. After going through the evidence, the learned trial Court convicted the appellant as aforementioned, and acquitted accused Nos.2 and 3 as mentioned hereinabove. Hence, the present appeal before this Court.

Ms. A. Jaya Reddy, the learned counsel representing Ms. A. Gayathri Reddy, learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, although the prosecution claims that it is a case of death by poison, it has failed to establish the three essential ingredients for proving the said case, namely (i) the procurement of the poison by the accused, (ii) administering of the poison by the accused, and (iii) the consequential death by the poison. Hence, the prosecution has failed to prove its case beyond the shadow of doubt.

Secondly, the entire case is based on the testimony of the sole eyewitness, namely Vemula Alekya (P.W. 12), the daughter of the deceased and the accused. A conviction can be based on the testimony of a sole eyewitness provided that the sole eyewitness is a witness of “sterling worth”. However, Vemula Alekya (P.W. 12) has been shattered in her cross-examination. Therefore, she is not a witness of “sterling worth”. Hence, the appellant’s conviction cannot be based on her testimony.

Lastly, although the prosecution has tried to rely on the testimony of V. Simhachalam (P.W. 3), however, the said witness has turned hostile, and has not supported the case of the prosecution. Therefore, the appellant deserves to be acquitted by this Court.

On the other hand, Ms. J. Sridevi, the learned Additional Public Prosecutor for the State of Telangana, has vehemently pleaded that according to Kunta Mallamma (P.W. 1), she performed the marriage of her daughter, Rajeshwari, with the accused-appellant. The accused-appellant and his parents constantly

harassed her daughter. She further claims that the accused had administered pesticide to the deceased. Her testimony is further corroborated by the testimony of Vemula Alekya (P.W. 12). For, in her examination-in-chief she clearly stated that it is her father who administered pesticide to her mother. The testimony of these witnesses is further corroborated by the testimony of Dr. M. Ashok (P.W. 11), who carried the Post-Mortem Examination. According to him, he discovered two abrasions present on the forehead. He also gave an opinion that “the cause of death was *Organo phosphate, an insecticide poison*”. He further proved the Post-Mortem Report (Ex. P. 9). Further, despite the repeated defense suggested that the deceased had consumed poison by herself, according to the testimony of Dr. M. Ashok (P.W. 11), the deceased had two injuries on her forehead. Therefore, clearly, it is not a case of suicide. For, nobody injures himself/herself on the forehead prior to consuming pesticide. Hence, the prosecution has succeeded in proving its case against the appellant. Therefore, the learned Additional Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record available before this Court.

Undoubtedly, in a criminal case, heavy burden lies on the prosecution to establish its case beyond a shadow of doubt. Therefore, it is the duty of the prosecution to cover the long distance between “may be true” and “must be true”. The said distance can be covered only with the presentation of cogent and convincing evidence. Any evidence, which is deterring, or leaves

lurking doubts in the mind of the Court, such lack of evidence dilutes the case of the prosecution. In such a scenario, the benefit of doubt should necessarily be given to the accused.

Undoubtedly, a conviction can be based on the testimony of a sole eyewitness. However, the witness must be of impeccable and sterling qualities. The Apex Court in the case of **Joseph v. State of Kerala**¹ has observed that where there is a sole witness, his/her evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. Further, the Apex Court in the case of **State of Haryana v. Inder Singh**² laid down the law that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. Thus, the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime.

In the present case, the prosecution has relied on the sole testimony of Vemula Alekya (P.W. 12), the daughter of the accused and the deceased. This witness is eight years old on the date of deposition. She was six years old child on the date of the alleged incident. In her examination-in-chief, she claims that *“my mother died when I was in first class. My father picked up a quarrel with my mother. My father administered pesticide to my mother. One woman came and took my mother to hospital at Mancherial or Karimnagar. My mother died”*. However, in her cross-examination, she states that *“my father used to go for agricultural work in the*

¹ (2003) 1 SCC 465

² (2002) 9 SCC 537

morning and used to return at 8:00 p.m. It is true my mother consumed pesticide". Witness says that A.1 administered pesticide. "... It was a Sunday. A.1 was not in our house when my mother consumed pesticide. A.1 came to the house after my mother was taken to the hospital. ...It is not true to suggest that A.1 did not administer pesticide to my mother".

Therefore, a bare perusal of the cross-examination of this witness clearly reveals that the witness has repeatedly changed her stand from that her father administered the pesticide to that her mother consumed the pesticide; from that her father was present at the home to that her father was not present at home. Therefore, the vacillating testimony of this witness makes her a rather unreliable one. Hence, the learned trial Court was not justified in convicting the appellant on a testimony which changes its colours every now and then.

Although the learned Additional Public Prosecutor has tried to emphasis the fact that the deceased had suffered two injuries on her head, but Dr. M. Ashok (P.W. 11) admits in his cross-examination that "if someone were to consume the pesticide, the person is likely to fall". Hence, the injuries on the forehead of the deceased can be explained by the fact that the deceased may have fallen after having consumed the pesticide. Hence, there is a grave possibility that it is not a case falling under Section 302 IPC. Although the case may fall under Section 306 IPC, no charge has been framed by the learned trial Court for the said offence. Therefore, this Court has no other option but to give the benefit of doubt to the appellant, and to acquit him of the offence under Section 302 IPC.

Since the appellant has already served the sentences for offences under Section 498-A IPC and under Sections 3 and 4 of the Dowry Prohibition Act, this Court need not express its opinion about the said offences.

For the reasons stated above, the conviction and the sentence imposed on the appellant (accused No.1), namely Vemula Kanukaiah, S/o. Lingaiah, for the offence under Section 302 IPC, vide judgment dated 30.01.2014, passed by the learned VI Additional District & Sessions Judge, Godavarikhani, is set aside. The appellant is acquitted of the offence under Sections 302 IPC. The fine amount, if any, paid by him in relation to the said offence shall be refunded to him.

Since the appellant (accused No. 1) has already undergone the sentences imposed for the offences under Section 498-A IPC, and under Sections 3 and 4 of the Dowry Prohibition Act, the said convictions and sentences are, hereby, confirmed.

Consequently, the appellant (accused No. 1), namely Vemula Kanukaiah, S/o. Lingaiah, shall be set at liberty forthwith, if he is not required in any other case or crime.

The Criminal Appeal is, accordingly, allowed.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

28th January, 2020
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