

HIGH COURT FOR THE STATE OF TELANGANA

CrI.A.No.1185 of 2013

Between:

Konyala Kistaiah.

.....Appellant

And

The State of A.P., rep. by its Public Prosecutor.

.....Respondent

JUDGMENT PRONOUNCED ON : 26.08.2022

HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

AND

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

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

A. VENKATESHWARA REDDY, J

G. ANUPAMA CHAKRAVARTHY, J

**HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
AND
HON'BLE SMT. JUSTICE ANUPAMA CHAKRAVARTHY**

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For Appellant

:Ms. A. Gayatri Reddy &
Ms.T.Bala Jayasree, Legal Aid Counsel.

For Respondent

: Public Prosecutor.

< Gist:

> Head Note:

? CITATIONS:

1. MANU/SC/0875/2020
2. (1992) 3 SCC 300
3. 2007 CrI.L.J. 20
4. AIR 1972 SC 2077
5. (1992) 3 SCC 106
6. (1999) 8 SCC 679

C/15

**HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY**

CRIMINAL APPEAL No.1185 of 2013

JUDGMENT : (Per G.Anupama Chakravarthy, J)

This appeal is arising out of the judgment dated 13.11.2013 in S.C.No.264 of 2012 on the file of VIII Additional District and Sessions Judge, Medak, FAC, III Additional District Judge (FTC), Medak.

2. The appellant is accused No.1. A charge sheet is filed against A-1 to A-3 for the offences punishable under Sections 304-B, 302 r/w.Sec.34, 201 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act. The trial Court, after considering the evidence on record, acquitted A-2 and A-3 of all the above said offences and also acquitted A-1 of the offences under Sections 304-B of IPC and Sections 3 and 4 of the Dowry Prohibition Act, but convicted him for the offences punishable under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- for the offence under Section 302 of IPC, and further sentenced the appellant to undergo

imprisonment for three years and also to pay a fine of Rs.5,000/- for the offence punishable under Section 201 of IPC and both the sentences were ordered to run consecutively.

3. The brief case of the prosecution is that Aruna @ Pavani (hereinafter referred to as 'the deceased') got married with A-1 on 20.03.2011 and at the time of marriage, the parents of the deceased gave Rs.1,50,000/- cash, gold pustelathadu weighing 2½ tulas, gold kammalu with buttalu weighing 1½ tula, gold vanku (ring) 1 tula, silver leg kadas 40 tulas, silver chains 6 tulas and other household articles as per the demand of the accused. After marriage, the deceased went to her matrimonial house. On 24/25.03.2011, the deceased went to her parents' house to attend a Jatara. It is the further case of the prosecution that A-1 demanded Rs.30,000/- for purchase of a motorcycle and the said amount was also paid by the parents of the deceased. After returning to the house of accused, A-1 to A-3 further harassed the deceased mentally and physically and also suspected her character. On 15.04.2011 at 2.00 p.m., A-1 picked-up a quarrel with the deceased in his hut, slapped her and the deceased went out to the adjacent hut of Gundaiah, but A-1

followed and beat the deceased, committed murder by throttling her neck, and to screen away the evidence, he poured kerosene and set fire to the dead body of the deceased and left the scene of offence. As a result, flames caught to the hut of Gundaiah and they also spread to the neighbouring huts of Pochaiah, Nathi Laxman, Nathi Mahipal, Nathi Bhumaiah.

4. Basing on the report of PW-13/village Sarpanch, a fire engine was sent and a case was registered under Section 174 of Cr.P.C., vide Crime No.35 of 2011 on the file of Pulkal Police Station. Pursuant to the FIR, a requisition was made by the Police to the Executive Magistrate to conduct inquest over the dead body of the deceased. During the course of inquest, the father of the deceased i.e. PW-1 gave a petition to the Inspector of Police and based on it, the Section of Law was altered from 174 Cr.P.C. to Sections 302, 304-B and 498-A of IPC. Later, the dead body of the deceased was sent for postmortem examination to the Government hospital, Jogipet and PW-16/Doctor conducted autopsy over the dead body and issued Ex.P-11/postmortem report, opining the cause of death as asphyxia due to strangulation and hemorrhagic

shock due to penetrating injuries to vital organs. After completion of investigation, the Sub-Divisional Police Officer, Medak, filed charge sheet against A-1 to A-3 for the offences punishable under Sections 304-B, 302 r/w.Sec.34, 201 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

5. During the course of trial, charges are framed against A-1 to A-3 for the offences under Sections 304-B, 302 r/w. 34 and 201 of IPC and also for the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act and the same were denied by all the accused and claimed to be tried. On behalf of the prosecution, PWs.1 to 21 were examined and Exs.P-1 to P-14 were marked. All the accused are examined under Section 313 Cr.P.C. and they denied the incriminating evidence of the prosecution and pleaded not guilty of the offences charged against them.

6. The trial Court acquitted A-2 and A-3 of all the charges levelled against them and A-1 alone was convicted for the offences punishable under Sections 302 and 201 of IPC and was acquitted of the rest of the offences as aforesaid.

7. It is contended by the learned counsel for the appellant that the case is based only on the circumstantial evidence and the prosecution has failed to prove the complete chain of circumstances connecting the events so as to convict the appellant, therefore, the conviction is bad in the eye of law and accordingly prayed to set aside the judgment of the trial Court, as the prosecution has miserably failed to prove the guilt of the appellant beyond reasonable doubt.

8. On the other hand, the learned Public Prosecutor contended that as per the last seen theory, the deceased was found alive along with the appellant when he was beating her in the open place and later her dead body was found in the burnt huts and the accused No.1/appellant has failed to explain as to how the deceased died, and therefore, prayed to confirm the judgment of the trial Court by dismissing the appeal.

9. Perused the record.

10. The point for determination in this case is;

Whether the trial Court is proper in convicting A-1 for the offences punishable under Sections 302 and 201 of IPC and

whether the prosecution is able to prove the guilt of the appellant beyond all reasonable doubt for the said offences ?

11. The criminal law was set into motion basing on the information given by PW-13/B.Srinivas Reddy, who was the Sarpanch of Chowtakur village. The report given by him is Ex.P-8. His evidence disclose that on 15.04.2011, while he was in his fields, one Ramchandra Reddy telephoned him stating that the huts in the village were burning. On that, he rushed to the huts and saw one dead body and identified her as that of the deceased "Pavani". His evidence further disclose that he informed the fire department and in turn, the fire engines have come to the spot to put off the flames. It is specifically deposed by him that the dead body of Pavani was found in the hut of one Pochaiah in their kitchen and by the time he reached, all the huts were burnt.

12. It is relevant to mention the relationship between the witnesses and the deceased for better appreciation of the facts. PWs.1 and 4 are the parents of the deceased, PWs.2 and 3 are the uncle and aunt by courtesy to the deceased, PW-5 is the brother of the deceased, PWs.6, 7, 8, 10 and 11 are the persons whose huts

were burnt in the said incident. PWs.9 and 12 are the neighbouring residents of the accused, PW-14 is the panch witness to the scene of offence, PW-15 is the inquest panchayatdar, PW-16 is the Doctor who conducted postmortem examination over the dead body of the deceased and opined that the cause of death of the deceased was due to strangulation and asphyxia and all the injuries found over the dead body of the deceased are ante-mortem injuries. PW-17 is the inquest panchayatdar who conducted inquest over the dead body of the deceased at the scene of offence and the inquest panchayatdars opined that the deceased Smt.Konyala Aruna @ Pavani got married with Kistaiah S/o.Pentaiah on 20.03.2011 as per Hindu customs and at the time of marriage, the father of the deceased gave net cash of Rs.1,50,000/-, 4 tulas of gold, 20 tulas of Silver articles and an amount of Rs.4,00,000/- towards marriage expenses and household articles, and that, 25 days after her marriage, the deceased was mentally tortured, ill-treated by her husband and in-laws of the family and that on 15.04.2011 at 4.30 p.m., all the accused conspired, throttled the deceased and thrown the dead body in the hut of Gundaiah and set fire to the huts to

conceal the evidence. PWs.18 to 21 are the Police officials who registered the crime at the first instance under Section 174 of Cr.P.C. and later altered to Sections 304-B, 302, 498-A and 201 of IPC and Sections 3 and 4 of the Dowry Prohibition Act and after completion of investigation, filed charge sheet against A-1 to A-3.

13. On perusal of the entire evidence on record, there is no iota of evidence on record to prove that the appellant has screened away the evidence and therefore, it can be construed that the trial Court has erred in convicting the appellant for the offence punishable under Section 201 of IPC, which is liable to be set aside.

14. There is no direct eye witness in this case and the case of the prosecution is based on the circumstantial evidence. Admittedly, PWs.1, 4 and 5 are not residing at the house of the deceased. Ex.P-8 is the report given by PW-1 subsequent to the report given by PW-13. Basing on Ex.P-8, the Sections of Law were altered, vide Ex.P-13/alteration memo. Their evidence only supports the case of the prosecution as to the manner of marriage, dowry and of suspicion over the appellant for the death of the deceased.

15. PWs.2 and 3, who are the uncle and aunt (distantly related) of the deceased, are residing in the same village, but their house is at a distance of one kilometer away from the house of the deceased. Their evidence disclose about the marriage between the deceased and the appellant, dowry paid by the parents of the deceased and demand made by the appellant for additional dowry. Their evidence further reveal that earlier to the date of offence, the deceased went to public telephone booth to call her parents and on coming to know the same, the appellant forcibly dragged her to his house and 7 or 8 days of the incident, the deceased died due to burn injuries. PWs.3 and 4 also suspected that the appellant might have caused the death of the deceased. On perusal of their evidence, it is evident that no omissions or contradictions have been pointed out by the defence, from their 161 Cr.P.C. statements.

16. PWs.6 to 11 turned hostile and Exs.P-2 to P-7 are their 161 Cr.P.C. statements. It is important to note that the 161 Cr.P.C. statements can only be used for corroboration and contradictions and it is a weak piece of evidence.

17. The evidence of PW-12, who is the Fire Officer, disclose that on 15.04.2011, they received information about burning of huts in Chowkathur village at 5 p.m. and on that, they went to the spot, extinguished fire and found one dead body in the house of one Gundaiah.

18. The evidence of PW-13 is quite contrary to the evidence of PW-12 as to the place where the dead body was found. The village Sarpanch i.e. PW-13 deposes that the dead body of the deceased was found in the hut of Pochaiah, whereas, PW-12 states that it was found in the house of Gundaiah. As per Ex.P-14/the crime report and Ex.P-10/inquest panchanama, the dead body of the deceased was shown and found in the house of Gundaiah. The oral evidence of PW.17/Tahsildar disclose that he conducted inquest over the dead body of the deceased in the house of Gundaiah. It is also relevant to mention that Gundaiah is the blood relative/brother of the appellant. PWs.14 and 15 are the inquest panchayatdars and also panchayatdars for the rough sketch/Ex.P-9, which was

prepared by the Police and their evidence corroborate the evidence of PW-17 and Exs.P-9 and 10.

19. Admittedly, the death of the deceased is not a natural death and even as per the evidence of the Doctor i.e. PW-16, the deceased died of Asphyxia due to strangulation and hemorrhagic shock due to penetrating injuries on vital organs leading to death. The evidence of PW-16 further disclose that the dead body of the deceased has three external injuries over the body corresponding with 4 internal injuries and they are;

“External injuries:

1. Burn injuries all over the body. Hyperaemia not present over the edge of the burn injuries.
2. Penetrating injury over the right side of chest near parasternal are between 4th and 5th ribs extending upto base of the heart about ½ x ¼ x 1".
3. Penetrating injury over the right side of the chest on the lateral aspect between 6th and 7th ribs extending upto the liver about ½ x ¼ x ¾th inches.

Internal injuries:

1. Penetrating injury on the right lung.
2. Penetrating injury on the base of the heart.
3. Penetrating injury on the liver.
4. Lacerated injury on right side of kidney.”

20. It is specifically deposed by PW-16 that all the injuries found over the dead body of the deceased are ante-mortem in nature and the approximate time of death is 16 to 20 hours prior to

his conducting of postmortem examination i.e. before 12.30 p.m. on 16.04.2011 and Ex.P-11 is the postmortem report.

21. It is important to note that external injuries mentioned in Ex.P-9 are corresponding with the injuries mentioned in Ex.P-11 and the evidence of PW-16 is crucial to prove that the death of the deceased is a homicide and not a suicide, as the external injuries on the dead body of the deceased prove that the deceased was inflicted with injuries which are ante-mortem in nature. As per medical jurisprudence, hemorrhages in strap muscles which are ante-mortem injuries, prove that the cause of death was asphyxia due to homicidal strangulation. It is the specific contention of the learned counsel for the appellant that the deceased might have died due to fire accident in a kitchen, but the said contention cannot be accepted in view of the above said discussion.

22. Furthermore, it has to be borne in mind that the death of the deceased did not occur in the house of the accused to prove the theory that a fire accident might have occurred while she was cooking in the kitchen of her own house. On perusal of the 313

Cr.P.C. examination of the appellant, no plea was taken by him either pleading ignorance or alibi as to his absence at the time of the incident. The incident took place in the day light i.e. at about 2.00 p.m. on 15.04.2011. It is the case of the prosecution that the appellant throttled the neck of the deceased, due to which, she died of asphyxia and strangulation, later they burnt the huts keeping the dead body of the deceased in the hut of Gundaiah, and due to the rise of flames, the huts of PWs.6 to 11 were also got burnt.

23. As stated supra, PWs.18 to 21 are the Police officials who registered the case initially under Section 174 of Cr.P.C. basing on the report of PW-13 i.e. Ex.P-1, vide Crime No.35 of 2015 on the file of Chowkatur Police Station and Ex.P-12 is the FIR. Later, basing on the report of PW-1 i.e. Ex.P-8, the Section of law was altered vide Ex.P-13/alteration memo. PW-21 who registered the FIR, has clearly deposed that he prepared the scene observation report i.e. Ex.P-9 and the rough sketch/Ex.P-14 in the presence of panchayatdars and also gave requisition to PW-17/Tahsildar to conduct inquest over the dead body of the deceased. His evidence further disclose that basing on the report of PW-1, he made an

endorsement about the alteration of charges for the offences under Sections 302, 304-B and 498-A of IPC.

24. The evidence of PW-19 disclose that he was present at the time of inquest and as it is a case of dowry death as per Ex.P-8, the case was handed over to Sub-Divisional Police Officer for investigation. PW-18 is the Sub-Divisional Police Officer who conducted the entire investigation and later charge sheet was filed by his successor i.e. PW-20.

25. The oral evidence of PWs.1 to 21 coupled with Exs.P-1 to P-14 on record show that the prosecution has proved the guilt of the appellant beyond reasonable doubt. Though it is a case of circumstantial evidence, the deceased and appellant were last seen together before the death of the deceased and the appellant has failed to offer proper explanation as to how the injuries are caused on the deceased prior to her death and as to how the dead body of the deceased was found in the hut of Gundaiah. No general defences have been taken by the appellant to establish his innocence.

26. In the judgment of Apex Court in **Jayantilal Verma v. State of M.P.**¹, their Lordships have held

“The most important aspect is where the death was caused and the body found. It was in the precincts of the house of the appellant herein where there were only family members staying.

.....We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before, is also quite obvious. No explanation has been given as to how the wife could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime. The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation.”

27. In **State of U.P. v. Dr.Ravindra Prakash Mittal**², the Apex Court held as under :

“The essential ingredients to prove guilt of an accused person by circumstantial evidence are: (1) The circumstances from which the conclusion is drawn should be fully proved; (2) the circumstances should be conclusive in nature; (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (4) the circumstances should, to a moral certainty, exclude

¹ MANU/SC/0875/2020

² (1992) 3 SCC 300

the possibility of guilt of any person other than the accused.

.....As pointed out supra, there is no direct evidence to connect the respondent with this offence of murder and the prosecution entirely rests its case only on circumstantial evidence. There is a series of decisions of this Court so eloquently and ardently propounding the cardinal principle to be followed in cases in which the evidence is purely of circumstantial nature. We think, it is not necessary to recapitulate all those decisions except stating that the essential ingredients to prove guilt of an accused person by circumstantial evidence are:

- (1) The circumstances from which the conclusion is drawn should be fully proved;
- (2) the circumstances should be conclusive in nature;
- (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence;
- (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused.

28. In **Trimukh Maroti Kirkan v. State of Maharashtra**³, the

Hon'ble Supreme Court held as under:

“Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any

³ 2007 CrI.L.J. 20

explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

29. While dealing with the above case, their Lordships have also dealt with case laws in **Nika Ram v. State of Himachal Pradesh**⁴, in **Ganeshlal v. State of Maharashtra**⁵, in **State of U.P. v. Dr.Ravindra Prakash Mittal** (2nd supra) and in the case of **State of Tamil Nadu v. Rajendran**⁶ and held that the medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries, and came to a conclusion that no explanation was offered by the accused in his examination under Section 313 Cr.P.C. as to the receiving of injuries found over the dead body and that the circumstances enumerated unerringly point out the guilt of the accused.

30. In the present case, the circumstances which are established, are closely linked with each other, as follows:

⁴ AIR 1972 SC 2077

⁵ (1992) 3 SCC 106

⁶ (1999) 8 SCC 679

1. The deceased got married with the appellant on 20.03.2011 and died on 15.04.2011 due to asphyxia as a result of strangulation.
2. The evidence of PWs.1 to 5 clearly reveal the demand of additional dowry made by the appellant by way of purchasing a motorcycle.
3. The evidence of PWs.2 and 3 clearly disclose that the deceased was beaten and forcibly dragged by the appellant to his house when she attempted to call her parents and the said incident took place 6 or 7 days prior to the present incident, which proves the motive for the occurrence.
4. The dead body of the deceased was found in the house of the brother of the appellant with external injuries including burn injuries corresponding to internal injuries which clearly reveal that the death of the deceased is not a natural one/accidental or suicidal but it is a homicide.

5. There is no explanation from the appellant as to how the huts were burnt or as to how the deceased's dead body was found in the house of Gundaiah i.e. the appellant's brother.
 6. The positive opinion of panchayatdars of the inquest panchanama i.e. Ex.P-10 as to the cause of death of the deceased incorporated at Column No.15 also corroborates the evidence of PW-16/the Doctor, who conducted postmortem examination on the dead body of the deceased and stated that the death of the deceased was due to asphyxia as a result of strangulation with hemorrhagic shock due to penetrating injuries and the said injuries are ante-mortem in nature.
31. Basing on the above circumstances, it can be construed that the appellant had harassed the deceased and on the fateful day, she was murdered by the appellant and later the dead body was burnt in the hut of the brother of the appellant, due to which, the other huts were also burnt. Therefore, the trial Court is justified in convicting the appellant for the offence punishable under Section 302 of IPC.

32. As stated supra, there is no evidence on record to prove that the dead body of the deceased was thrown into flames to screen away the evidence or in order to screen away the evidence, the huts were set to fire. In the absence of such evidence on record, conviction of the appellant for the offence punishable under Section 201 of IPC cannot be sustained.

33. Accordingly, the appeal is allowed in part, setting aside the judgment of the trial Court insofar as conviction and sentence imposed against the appellant for the offence under Section 201 of IPC. The conviction and sentence imposed by the trial Court against the appellant for the offence under Section 302 of IPC is hereby confirmed.

Pending miscellaneous applications, if any, shall stand closed.

A. VENKATESHWARA REDDY, J

G.ANUPAMA CHAKRAVARTHY, J

Date: 26.08.2022
ajr