

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
:: AT HYDERABAD ::**

**\* \* \***

Between:

Ahmed Hussain, S/o.Rukmuddin

Petitioner

VERSUS

The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court of A.P. and others.

Respondents

**JUDGMENT PRONOUNCED ON: 08.04.2024**

**THE HONOURABLE SRI JUSTICE P. SAM KOSHY  
AND  
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? : **Yes**

**P.SAM KOSHY, J**

**\* THE HONOURABLE SRI JUSTICE P. SAM KOSHY  
AND  
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**

**+ Criminal Appeal No.92 of 2014**

**% 08.04.2024**

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The State of Andhra Pradesh,  
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High Court of A.P. and others.

Respondents

! Counsel for the Appellant(s) : Mr. Achuta Reddy

^Counsel for the 1<sup>st</sup> respondent(s)  
-State : Learned Public Prosecutor

Counsel for respondent Nos.2 to 5-  
Accused : Mr. Koppula Gopal

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> HEAD NOTE:

? Cases referred ::

1. 2016:CGHC:17082-DB [CRMP.No.147 of 2011, dated 04.10.2016,  
High Court of Chhattisgarh, Bilaspur]
2. AIR 2014 SC 1256

**THE HONOURABLE SRI JUSTICE P. SAM KOSHY**  
**AND**  
**THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**  
**Criminal Appeal No.92 of 2014**

**JUDGMENT:** *(per the Hon'ble Sri Justice P. Sam Koshy)*

The instant is an appeal preferred by the appellant / accused under Section 372 of Criminal Procedure Code, 1973 (for short, 'the Code') assailing the judgment of acquittal dated 30.07.2012 in Sessions Case No.154 of 2008 on the file of VI Additional Sessions Judge (F.T.C.) at Vikarabad, Ranga Reddy District (for short, 'the impugned order').

**2.** Heard Mr. Achuta Reddy, learned counsel for the appellant; the learned Public Prosecutor, for the 1<sup>st</sup> respondent-State; and Mr. Koppula Gopal, learned counsel for respondent / Accused Nos.2 to 5.

**3.** *Vide* the impugned order, the Court below has found the respondent / Accused Nos. 2 to 5 not guilty for the charges leveled against them and acquitted them.

**4.** The case of the prosecution in brief is that the deceased Smt. Anusha Begum was married to the respondent No.2 / Accused No.1, viz., Naseer Ahammed on 01.05.2005. It was

contended by the complainant that the deceased is the brother of PW.1 (Sri Mohammad Sultan). It was further contended by the complainant that at the time of marriage an amount of Rs.50,000/- was given in cash in addition to 5 tolas of gold, 25 tolas of silver, 1 bicycle, 1 cot and other household articles to the respondent No.2 / Accused No.1. However, soon after the marriage, the respondent No.2 / Accused No.1 and other family members started harassing the deceased asking her to convince her parents to arrange a new Auto for respondent No.2 / Accused No.1. It was further contended by the complainant that the respondent No.2 / Accused No.1 along with the other accused persons have started physically and also mentally torturing her, and there is also threat to her life which was informed by the deceased to the PW.1 on the telephone.

**5.** It was further contended by the complainant that on 14.05.2006, the deceased has requested PW.1 (brother) to come to Dornal Village, i.e., the matrimonial home of the deceased. On 15.05.2006, when PW.1 went to the home of the deceased at Dornal Village, the deceased had already died under suspicious circumstances. Immediately, at 12:30

P.M., the complainant (PW.1) lodged a report with the Mominpet Police Station and the same was registered as a case in Crime No.76/06 against the accused for the offence punishable under Sections 498 and 306 of I.P.C. Thereafter, an inquest was conducted and the body was sent to the Government Civil Hospital Vikarabad for conducting an autopsy; and a post-mortem report was issued by the Doctor (PW.10). In the post-mortem report, the cause of death of the deceased was due to *asphyxia* due to hanging. On 21.05.2006, the accused were arrested and sent for judicial remand. Subsequently, charge-sheet was also filed against the accused persons for the offence punishable under Section 498 and 306 of I.P.C.

**6.** Subsequent to the committal of the case to the Sessions Court, the matter was registered as Sessions Case No.154 of 2008. In all nine witnesses were examined on behalf of the prosecution. No evidence was examined in support of the defence. During the trial, the Court below has framed an additional charge under Section 302 of I.P.C.

**7.** After conclusion of the trial and the accused being examined under Section 313 of the Cr.P.C., the Court below

passed the impugned judgment in Sessions Case No.154 of 2008 on 30.07.2012 wherein it was held that the prosecution had failed to prove its case beyond reasonable doubt, and therefore, the accused persons are liable to be acquitted of the charges leveled against them.

**8.** It is this judgment of acquittal which now stands challenged by the appellant in the present appeal.

**9.** From the last couple of hearings, there has been no representation on behalf of the appellant. Considering the fact that it is an appeal of the year 2014 and that the appeal is also an acquittal appeal, with the able assistance of the learned Public Prosecutor we proceed to decide the appeal on its merits.

**10.** There is one thing which needs to be highlighted at the first instance, i.e., the prosecution has not dealt with properly, or at least sufficient materials were not available on record. That is the accused persons being charged both for the offence under Section 302 and also for the offence punishable under Section 306. In the opinion of this Bench, the prosecution could not have charged the accused both

under Sections 302 and 306 simultaneously. Either it could be a case under Section 302 that of murder or it could have been an offence under Section 306 pertaining to suicide. The former would have been on an overt act by the accused persons and the latter would have been by an act on the part of the deceased herself under duress, compulsion and abetment by the accused.

**11.** A plain reading of paragraph No.3 of the impugned order would go to show that an additional charge under Section 302 of I.P.C. has been framed against the accused. It is also not a case where the charge under Section 302 of I.P.C. has been alternatively leveled. No material is also available on record to show as to what led to the framing of the additional charge under Section 302 of I.P.C against the accused. We leave this fact as it is at this juncture and proceed further with the evidence that has come on record.

**12.** The post-mortem report (Ex.P.4) that was submitted by PW.8, i.e., the Doctor, Smt. Indira Priya Darshini, bears a clear opinion of the death being caused due to *asphyxia* due to hanging. Nowhere in the post-mortem report does it show that the ligature mark found around the neck of the deceased

was anti-mortem or post-mortem. The post-mortem report also does not reflect any injuries or marks of injuries found on the body of the deceased. Neither is there any injury or marks of injury found during the inquest. Another aspect which needs to be considered is when PW.1 (brother of the deceased) had reached the matrimonial home of the deceased at Dornal Village, there was nobody in the house and the deceased was found dead with ants and creatures over the dead body. Though in his examination in chief, PW.1 refers to the ill-treatment and harassment about the demand of dowry by the respondent No.2 / Accused No.1's family members, but in his cross-examination (Ex.P.1) he has accepted that he did not mention anything about the previous day the deceased had called him on the telephone and informing him about being beaten by the in-laws. When we read the deposition of PW.2 (father of the deceased), i.e., the same is totally silent of PW.1 having received the telephone call the previous day of death, or that PW.1 had visited the site on the fateful day and found the deceased dead. Rather, PW.2 gave an altogether different story of his other two sons, viz., Maqbool and Rehman, having gone to the matrimonial home of the deceased the previous day to



bring her to the parental home which was not permitted by the accused persons; and thereafter, PW.2, along with other family members went to the matrimonial home of the deceased on the date of incident and found that the deceased had already died.

**13.** If we take into consideration the statement of PW.3, the mother of the deceased and wife of PW.2, PW.3 gives an altogether different version in respect of the incident. She stated that when some auto persons of Dornal Village informed her about her daughter's death, PW.3 and her children went to the matrimonial home of the deceased at Dornal village and found the body of the deceased in the house of respondent No.2 / Accused No.1 having injuries on the face, and that the accused persons were not available in the house.

**14.** PW.4 (sister of the deceased) resident of Dornal Village, narrates an entirely different version. She stated that the respondent No.2 / Accused No.1 had illegally married someone else which the deceased has informed her whenever they both met. When PW.4 learnt about the death of the deceased she went to the house of the 2<sup>nd</sup> respondent /

Accused No.1 and found that there was nobody present in the house except the body of the deceased.

**15.** With so much of discrepancies, contradictions and omissions in the statements of all the material prosecution witnesses coupled with the fact that the post-mortem report reflects the death to have been due to *asphyxia* on account of hanging, we do not find any illegality or wrong appreciation of evidence made by the Court below in holding that the prosecution has failed in proving its case beyond reasonable doubt.

**16.** In **State of Chhattisgarh vs. Sanjay Kumar Mahale and another**<sup>1</sup>, a learned Single Judge of the High Court of Chhattisgarh, held at paragraph Nos.10 to 16, which for ready reference is extracted as under :

*“10. ... .. In the instant case, the Court below after dealing with the prosecution witnesses has pointed out different contradictory statements made by them at different stages of the trial. The Court below has emphatically held that there are omissions, contradictions and improvements in the version of the prosecution evidence which creates a great element of*

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<sup>1</sup> 2016:CGHC:17082-DB

[CRMP.No.147 of 2011, dated 04.10.2016, High Court of Chhattisgarh, Bilaspur]

*doubt. It is also a settled position of law that whenever there is a doubt created in the mind of the Court, the benefit of which should always go in favour of the accused person.*

**11.** *It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of **Phula Singh Vs. State of Himachal Pradesh**<sup>2</sup>, , in Para-10, has in very categorical term held that: "The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."*

**12.** *Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.*

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<sup>2</sup> AIR 2014 SC 1256

*The law in this regard is by now well settled in a series of judgments of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations. That while re-appreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.*

**13.** *According to the Supreme Court what the appellate Court must bear in mind is that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.*

**14.** *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The high Court is also required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.*

**15.** *It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:*

- *2007 (4) SCC 415 – Chandrappa v. State of Karnataka.*
- *2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.*
- *2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.*
- *AIR 2009 SC 1542 (Para 12) – State of Punjab v. Sukhchain Singh & Anr.*
- *2012 (6) SCC 589 (Para-27) – Rohtash v. State of Haryana.*

*It is also relevant at this juncture to highlight the recent view of the Supreme Court in the case of Dilawar Singh (Supra), paragraph-36 relied upon by the respondent which is reproduced hereunder:*

*“The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.”*

**16.** *Thus, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error on law or on fact in reaching to the said conclusion of acquitting the respondents of the charges leveled against them.”*

**17.** In the light of the aforesaid judicial precedents coupled with the fact that the appeal is more than ten years old and the accused persons were already on bail during trial, and after passing of judgment of acquittal by the Court below the accused have been out for more than ten years, therefore, we are not inclined to allow the appeal.

**18.** Another ground or reason why this Bench is not inclined to entertain the appeal is the fact that except for the vague, omnibus and a general allegation of harassment and alleged torture of demand of dowry, in addition to the said general and omnibus statements made by the prosecution witness particularly PWs.1 to 4, the prosecution has miserably failed to bring cogent, sufficient material meeting the necessary ingredients to make out an offence separately under Section 306 of I.P.C. that of instigation, abetment, etc., and secondly, ingredients to make out an offence under Section 302 of I.P.C. that of murder. Likewise, no material

either oral or documentary, not even the post-mortem examination report suggests that the deceased had died a homicidal death. On the contrary, the opinion expressed by the Doctor (PW.8) is that the cause of death of the deceased was due to *asphyxia* due to hanging. All the prosecution witnesses who have said to have reached the spot specifically contended that there was nobody else in the house so as to attribute any allegations of the accused having been murdered the deceased. For these reasons also, the appeal is devoid of merit and deserves to be rejected.

**19.** Accordingly, the appeal fails and the same is dismissed. No costs.

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

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**P.SAM KOSHY, J**

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**SAMBASIVARAO NAIDU, J**

Date: 08.04.2024

**LR copy to be marked : YES**

**B/o.**

Ndr