*** THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**
AND
THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

+ Criminal Appeal No.704 of 2013

% Dated 24-10-2019.

Amujuri Balaraju

..... Appellant

Vs.

$ State of A.P., rep. by its Public Prosecutor, High Court.

..Respondent

! Counsel for the appellant : Sri G.Vijayasaradhi, learned counsel for Smt.S.Pranathi.

^ Counsel for the respondent : The Public Prosecutor

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> HEAD NOTE:

? Cases referred

[1] Judgment of the Supreme Court in Crl. A. No.1553 of 2019, dated 14.10.2019.

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Criminal Appeal No.704 of 2013

Amujuri Balaraju

.....Appellant

Vs.

State of A.P., rep. by its Public Prosecutor, High Court.

....Respondent

JUDGMENT PRONOUNCED ON: 24-10-2019

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

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

JUSTICE C. PRAVEEN KUMAR

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL APPEAL No.704 of 2013

JUDGMENT: (per the Hon'ble Sri Justice C.Praveen Kumar)

Assailing the conviction and sentence imposed in Sessions Case No.18 of 2011 on the file of the Sessions Judge, Vizianagaram, by judgment dated 17.07.2013, wherein accused was convicted for the offences punishable under Sections 302 and 498-A of the Indian Penal Code (for short "I.P.C.") and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for six months, and to undergo imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for two months, respectively, the present appeal came to be filed under Section 374(2) of Cr.P.C. by the appellant-accused.

Originally the sole accused was tried on four charges i.e for the offences punishable under Sections 498-A, 304-B, 302 and 201 of IPC. While acquitting the accused for the offences punishable under Sections 304-B and 201 of IPC, the learned Sessions Judge convicted the accused as referred to above.

The substance of the charges against accused is that on 10.07.2010 at about 8.45 P.M., in the house of the accused at Garbham village, Merakamudidam Mandal, Vizianagaram Disitrict, he caused the death of his wife-Amujuri Adilaxmi ("the

deceased"), aged about 18 years, by strangulation, after subjecting her to harassment and cruelty. After committing the said offence, he screened the evidence by creating a scene as if the deceased died by hanging.

The facts as culled out from the evidence of prosecution witnesses are as under:-

P.W.1 is the father, P.W.2 is the mother and P.W.3 is the brother of the deceased. The accused is the husband of the deceased. P.W.4 and P.W.5 are the neighbours of the accused and the deceased. The marriage between the accused and the deceased took place in the year 2009 in Simhachalam Temple. It is said that at the time of marriage, a sum of Rs.60,000/- was paid towards marriage expenses apart from Saare samans. Thereafter, the accused and the deceased set-up their family in the rented house of PW.16-Chandaka Appalanaidu, where they started living initially for some time happily. It is said that PW.1 agreed to pay Rs.40,000/- to the accused and when he was unable to pay the same, the accused started harassing the deceased by demanding her to bring money. It is said that about a day prior to the date of incident at 7.00 p.m., the deceased telephoned to PW.1 and informed that the accused developed intimacy with one Kumari and he was roaming with her. On the date of the incident i.e., 10.07.2010, the accused is said to have telephoned to PW.3, the son of PW.1, and informed him that the deceased died by hanging herself. Immediately, PW.1 to PW.3 went to the house of the accused

and found the deceased lying dead on the cot. When PW.1 questioned the accused about the cause of death, he is said to have told him that the deceased committed suicide by hanging herself. PW.1 found an injury on the neck of the deceased. Suspecting some foul play, he lodged Ex.P1-report before PW.17 Ch. Rukmangadhar Rao, Station House Officer, Budarayavalasa P.S., basing on which, a case came to be registered initially for the offence punishable under Section 304-B of IPC. Ex.P25 is the F.I.R. PW.15 P.Mallikharjuna Rao, the Inspector of Police, Budaravalasa P.S., took up investigation, visited the scene of offence, observed the same and prepared a scene of offence observation report. Ex.P13 is the scene of offence observation report. He also prepared a rough sketch of the scene under Ex.P26. Thereafter, he got the scene of offence photographed through PW.12 Reddi Venkati.

On the same day, at about 11.00 A.M., PW.13 K.Chandra Kishore, the Tahsildar-cum-Mandal Executive Magistrate, Merakamudidam conducted inquest over the deadbody of the deceased in the presence of PWs.1 to 3 and others. Ex.P14 is the inquest report. Thereafter, the deadbody was sent for post-mortem examination. PW.14 – Dr. N.Ratna Kumari, Civil Assistant Surgeon, Government Head-quarters Hospital, Vizianagaram, conducted autopsy over the deadbody of the deceased and issued Ex.P22 postmortem examination report, opining that the death of the deceased was homicidal.

On 13.07.2010 at about 4.00 P.M., PW.15, with the assistance of the Sub-Inspector of Police, Budarayavalasa P.S. arrested the accused and seized the shirt, which was worn by the accused at the time of commission of offence, in the presence of PW.11 and another. On 02.08.2010, PW.15 visited Garbham village, secured the presence of PWs.6 to 10 and others and recorded their statements.

After completing the investigation and after receipt of RFSL reports etc, which were placed on record as Exs.P-22 and P-27, P.W.15 laid charge-sheet against the accused before the Court of the Judicial Magistrate of First Class, Cheepurupalli, Vizianagaram District, which was taken on file as P.R.C.No.12 of 2010, who, after complying with Section 207 Cr.P.C., committed the case to the Sessions Division under Section 209 of Cr.P.C, as the offence under Section 302 of IPC is exclusively triable by Court of Session. On committal, the same came to be numbered as Sessions Case No.18 of 2011.

Basing on the material available on record, charges under Sections 498-A, 304-B or in the alternative under Sections 302 and 201 of IPC against accused were framed, read over and explained to him in Telugu, to which he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P-1 to P-28 and M.Os.1 to 14.

After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the

incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. But, however, he did not adduce any oral or documentary evidence in support of his plea.

Out of 17 witnesses examined by the prosecution, P.Ws.1 to 11 did not support the prosecution case and were declared hostile. Relying upon the circumstance of presence of the accused in the house at the time of offence and recovery of shirt button of the accused coupled with the circumstance of the accused giving false information as to the cause of death, the learned Sessions Judge convicted the accused as stated supra. Challenging the same, the present Criminal Appeal came to be filed.

As stated earlier, out of 17 witnesses examined by the prosecution, PWs.1 to 11 did not support the prosecution case and they were treated as hostile by the prosecution. It is not in dispute that though initially they deposed about the involvement of the accused in the offence, but, when the case was deferred for cross-examination, the said witnesses did not support their version in chief-examination.

As seen from the evidence of PW.1, who is none other than the father of the deceased, P.W.1 performed the marriage of the deceased with the accused in Simhachalam temple and at the time of the marriage, he paid Rs.60,000/- towards marriage expenses and saare samans. After marriage, both of them lived in the rental house of PW.16. Though PW.1 agreed to pay

a dowry of Rs.40,000/-, but he did not pay the same. The accused is said to have harassed the deceased to bring more dowry. It is said that he informed the accused that due to his financial trouble he could not pay more dowry to him and required some more time to pay the dowry amount. But, however, the accused was harassing the deceased to bring the dowry which was informed to him by the deceased.

This witness speaks about the deceased informing him about the harassment meted out to her in the hands of the accused one day prior to the date of incident. On the date of death of the deceased, the accused telephoned him and informed that the deceased died by hanging. Immediately, he along with other family members visited the house of the accused and found the deceased lying dead on the cot with an injury on the neck and that the accused, who was present there, informed him that the deceased committed suicide by hanging. Thereafter, the law was set in motion.

But, when the case was deferred for cross-examination at the request of the defence counsel, this witness resiled from what he has stated in his chief-examination. He states that the deceased did not inform him anything about the quarrel between the deceased and the accused and that he did not find any objects which relates to the death of his daughter at the dead body of the deceased. He further stated to police that he does not know the cause of death of the deceased. All the suggestions given by the Public Prosecutor to PW.1 were denied,

except to the suggestion that the marriage of the accused with his daughter was not liked by the parents of the accused. The defence counsel also cross-examined this witness, wherein he admits that he does not know how to write and read, but he can put his signature. According to him, somebody drafted Ex.P1 report in the police station, but he does not know his name. He further admits that his daughter never reported to him about the demands made by the accused and the harassment meted out by her in the hands of the accused. He further states that he did not present a report to Police during that night after the death of his daughter. However, he states that the deceased and the accused loved each other and their marriage was a love marriage and therefore no dowry was paid at the time of marriage. It was further elicited that the accused came to the house on the next day morning after coming to know about the death of the deceased and thereafter the accused was taken to the police station. It would be appropriate to extract the relevant portion in the evidence of P.W.1 which reads as under:

> "..I did not present a report to police during that night after the death of my daughter. It is true that my daughter Adi Laxmi and the accused loved each other and their marriage was a love marriage and therefore no dowry was paid at the time of marriage. The accused came to the house on the next day morning after came to know about the death of my daughter. It is true that the accused was taken to police station on the day when the inquest was conducted..."

From the evidence of this witness it is very clear that he does not speak about the accused causing the death of the

deceased and does not depose about the presence of the accused in the house at the time of the incident. Though in chief examination, P.W.1 states that by the time they reached the house, the accused was present in the house and informed that the deceased committed suicide, but he resiled from the said version in the cross examination and stated that the accused came to the house on the next day morning on coming to know about the death of the deceased. Therefore, the evidence of this witness in our view doesn't conclusively establish the presence of the accused at the time of incident. Therefore, a presumption under Section 106 of the Evidence Act also cannot be drawn to hold that the accused was present at the time of incident.

In **Narra Peddy Raju v. State of A.P. now State of Telangana**[1], the victim appearing as PW.1, in chief-examination, supported her case and virtually repeated what has been said in the F.I.R. However, in cross-examination, she turned hostile and denied whatever had been said in the chief-examination. In those circumstances, the Supreme Court held that the evidence of the said witness, who is blowing hot and cold and changing her stand from time to time, cannot be based for convicting the accused as she cannot be classified as a trustworthy witness.

In the instant case also, as stated supra, PW.1, father of the deceased, in his chief-examination supported the version of

[1] Judgment of the Supreme Court in Crl. A. No.1553 of 2019, dated 14.10.2019.

the prosecution, but in the cross-examination, he completely resiled from the version given in chief-examination. Thus, PW.1 cannot be classified as a trustworthy witness. Based on his uncorroborated evidence, it would be improper to convict the accused.

Coming to the evidence of P.W.2, she is none other than the mother of the deceased. She was also declared hostile by the prosecution. There is nothing in the evidence of P.W.2 to establish the presence of accused in the house when P.Ws. 1, 2, 3 and others went there.

P.W.16 is one another witness whose evidence was relied upon by the learned Sessions Judge to establish the presence of the accused in the house. He was also declared hostile by the prosecution. In the chief examination, he deposed that, on one morning, by the time he went to the house of the accused, he saw the dead body of the deceased. The family members of the deceased and the accused were also present. It is said that the parents of the deceased came there in the morning and when he asked them about the cause of death, they stated that they do not know. When he was examined by the police, he stated that he went to the house of the accused on the night before but not on the next day morning. As he resiled from his earlier version before the police, he was declared hostile. There is no other evidence on record to show that the accused was present during that night.

The learned Additional Public Prosecutor tries to rely upon the scene of offence panchanama to say that except the accused, no other person could have entered the house and killed the deceased. But there is no evidence on record to show that the door was locked from inside and the accessibility of entering the house for others is not possible. Things would have been different had the presence of the accused at the time of the incident had been established. Though the learned Additional Public Prosecutor made an attempt to bring home the guilt of the accused by establishing his presence in the house at the time of the incident, we feel that the evidence of P.Ws. 1, 2 and 16 does not establish the presence of the accused in the house at that time. Strangely, the learned Sessions Judge relied upon the contents of Exs.P1, P2, and Ex.P14-inquest report to base a conviction, which in our view is incorrect, since they are not substantive pieces of evidence. In fact, P.W.1, who lodged Ex.P1 report, goes back on his version, the effect of which was not answered by the learned Sessions Judge.

At this juncture, it would be appropriate to refer to the observations of the Hon'ble Supreme Court in **Narra Peddy Raju**[1], wherein it was held that the statement made on oath in the Court has to be the foundation of conviction and that the conviction of an accused cannot be based on a statement of the witness recorded under Section 161 Cr.P.C. or even under Section 154 Cr.P.C., especially when the witnesses resile from

their earlier statements while appearing in the Court and make a completely different statement in the Court. In view of the aforesaid observations of the Supreme Court, we feel that the conviction of the accused based on the contents of Exs.P1, P2 and P14 cannot be sustained.

The only other circumstance relied upon by the prosecution is the recovery of shirt button at the scene of offence. As contended by the learned counsel for the appellant, the shirt itself was recovered three days after the offence. When once the presence of the accused in the house itself is disputed, recovery of the button of the shirt at the scene, which is the house in which he was living, would not be a material circumstance. Apart from this, it is also to be noted here that the case of the prosecution is that the deceased was throttled to death, but the evidence of the postmortem doctor does not indicate the presence of any nail or finger marks on the neck of the deceased. Therefore, we feel that the circumstances relied upon by the prosecution are not proved so as to form the chain of events connecting the accused with the crime. Hence, the conviction and sentence imposed against the appellant-accused are not sustainable and are liable to be set aside.

In the result, the Criminal Appeal is allowed and the conviction and sentences imposed against the appellant-accused – Amujuri Balaraju S/o. Bushanam, for the offences punishable under Sections 302 and 498-A of I.P.C., in Sessions

Case No.18 of 2011 on the file of the Sessions Judge, Vizianagaram, by judgment dated 17.07.2013, are set aside. The appellant-accused is acquitted and he shall be set at liberty forthwith, if he is not required in any other case.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:24.10.2019

Note:
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