
(2001) 02 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 161 of 1996 and 154 of 1997

Neerudu John Wasley

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 201, 302, 304, 304B

Citation : (2001) 2 ALD(Cri) 180 : (2001) 2 ALT(Cri) 1 : (2001) 2 DMC 530

Hon'ble Judges : T. Ch. Surya Rao, J;Ramesh Madhav Bapat, J

Bench : Division Bench

Advocate : C. Parveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

T. Ch. Surya Rao, J.—Criminal Appeal No. 16 of 1996 has been filed by the sole accused assailing the conviction and sentence passed against him by the learned Sessions Judge, Medak by his judgment in Sessions Case No. 161 of 1995 dated 29.2.1996 u/s 304 Part-II of the Indian Penal Code (for brevity "IPC").

2. Criminal Appeal No. 154 of 1997 has been filed by the State assailing the order of acquittal for the charges under Sections 302, 304-B and 201 of the I.P.C.

3. Since both the appeals arise out of the same judgment in Sessions Case No. 161 of 1995, both the appeals can be disposed of by a common judgment.

4. The gravamen of the charge against the sole accused was that he having married the deceased Sujatha Grace subjected her to cruelty and harassment within three years of her marriage and soon before her death while demanding an amount of Rs. 5,000/- and that on 11.4.1993 at about 10.30 p.m. in his house at Medak he did commit the murder by intentionally causing the death of his wife by throttling her to death and that knowing pretty well that the deceased died a homicidal death, he did cause the evidence of the said offence to disappear by buying the dead body in Mission Compound, Medak with an

intention to screen himself from legal punishment and thereby committed the offences punishable under Sections 302, 201 and 304-B, I.P.C.

5. At the time of trial, the prosecution examined as many as ten witnesses in all.

6. The case of the prosecution as unfolded by the testimony of the witnesses, in brief, may be stated thus : The deceased Sujatha Grace was the wife of the accused. P.W. 1 is the sister and P.W. 3 is the mother of the deceased. P.W. 2 is the relation of the deceased. The marriage of the deceased with the accused was performed in the month of May, 1990. At the time of marriage, five tolas of gold ornaments were given to the deceased. The deceased was working as Staff Nurse in the hospital and the accused was working as Teacher by then. After the marriage, both of them lived together happily for six months.

7. Thereafter the deceased came to P.W. 3 and informed the demand of the accused for a scooter. P.W. 3 purchased a scooter and gave it to the accused. Further it is said that even after the purchase of scooter, the accused was harassing the deceased for money.

8. On 12.4.1993 P.Ws. 1 and 3 received information on phone about the death of the deceased due to heart attack. Immediately P.W. 1 went to Bodhan, picked up her father and thereafter all of them went to the house of the accused at Medak and having found the house of the accused was locked and from there they went to the house of the mother of the accused. By the time they reached that place, the deceased was already given bath and the dead body of the deceased was kept in the coffin. When enquired, it is said that the accused told them that the deceased died of heart attack. When repeatedly asked by them, the accused took the Bible into his hands and sworn on it and informed them that the deceased died due to heart attack. Having been satisfied with the same, the accused and others went to the graveyard where the dead body of the deceased was buried.

9. Thereafter, P.W. 1 and others went to the house of the elder sister of P.W. 1, who is also staying in Medak and stayed there upto 3.00 p.m. on that day. Upon making enquiries in the hospital, it revealed that the deceased worked till 4.00 p.m. in the hospital and nothing was wrong with her health. Then they felt suspicious. Thereafter, all of them left to Nizamabad.

10. On 17.4.1993 P.W. 1 got a report typed and sent it through P.W. 2 to P.W. 9, the S.I. of Police. Ex. P2 is the complaint. P.W. 9 registered the case as Cr. No. 56 of 1993 u/s 174, Cr.P.C. and issued Ex. P10 F.I.R. On a requisition given by P.W. 9, the S.I. of Police, P.W. 8, the Mandal Revenue Officer, on 19.4.1993 got the dead body exhumed for conducting inquest in the presence of P.W. 5 and another under Ex. P4 exhumation proceedings and thereafter held inquest over the dead body of the deceased whereat Ex. P5 inquest report was drafted. The inquestdars and Panch witnesses were of the opinion that it was a case of natural death.

11. Thereafter the dead body was sent to P.W. 7, the Deputy Civil Surgeon, Government Hospital, Medak, who along with another doctor, conducted autopsy

over the dead body of the deceased- During the course Of post-mortem examination, the doctors found the following external injuries on the person of the deceased.

"(1) Contusion left side of the neck upper part 1/2" x 1/4".

(2) Contusion left side of the neck 1" x 1/4".

(3) Contusion over the back left side upper part 2" x 1/4."

On dissection the doctors found that the structures around the hyoid bone at greater cornua on the left side were contused and the fracture of the greater cornua of hyoid bone on the left side was contused. The doctors opined that the deceased died due to throttling to the best of their knowledge and issued Ex. P-7 Post-mortem Certificate.

12. P.W. 10 took up further investigation in this case and eventually laid the charge-sheet against the accused.

13. As aforesaid the prosecution examined in all 10 witnesses and got Exs. P1 to P10 marked. None was examined on the side of the accused and no document except Ex. D1 a contradiction from the previous statement of P.W. 1 was got marked.

14. Considering the evidence, both oral and documentary adduced on the side of the prosecution and after hearing on either side, the learned Sessions Judge, Medak acquitted the accused of all the charges levelled against them under Sections 302, 304-B and 201 of the I.P.C. However, he found A-1 guilty of the offence punishable u/s 304 Part-II, I.P.C. Consequently he sentenced the accused-appellant to suffer R.I. for a period of three years.

15. Assailing the same as aforesaid, the appellant filed Criminal Appeal No. 161 of 1996 and the State filed Criminal Appeal No. 154 of 1997 questioning the order of acquittal of other charges against the accused.

16. There is no oral testimony about the death of the deceased. The case of the prosecution essentially rests on circumstantial evidence. The cause of death according to the case of the prosecution was throttling and the death was due to strangulation due to asphyxia. Indeed the finding on this point essentially disproves the case on either way.

17. The apparent cause of the death as can be seen from the evidence of the inquestdar, P.W. 8, the Mandal Revenue Officer and the inquest Panch P.W. 5 was that the deceased died a, unnatural death. On a perusal of the testimony of P.W. 8 shows that the dead body was in a highly putrefied condition and, therefore, they could not find any visible injuries on the body of the deceased. In the absence of such evidence showing the injuries, there was no plausible reason for them to come to a conclusion that it was a case of unnatural death. Whatever it may be the opinion expressed by the inquestdar and inquest Panch, is not a decisive factor.

18. The dead body was rightly sent to the doctor P.W. 7 for conducting autopsy so as to know the actual cause of death. The evidence of P.W. 7 thus gains significance as the entire edifice of the case of the prosecution rests on the testimony of this witness. According to P.W. 7, who was by then working as Deputy Civil Surgeon, Government Hospital, Medak, that he conducted the autopsy along with another Medical Officer. The team of doctors noticed three external injuries as extracted hereinabove. The presence of these injuries appears to be shrouded in mystery. It may be mentioned here that P.W. 7 was the same doctor, who examined the deceased when the accused and the elder sister of the deceased brought her to the hospital, when he declared the deceased dead. This can be seen from his evidence in the cross-examination portion at the end. It is further clear from his evidence that he questioned them as to whether they suspected any foul play and of course both of them said "no". The significant part of it is that the sister of the deceased was with the accused in having said so. It is legitimate to consider at this stage that the doctor, who questioned the sister of the deceased and the accused, as to whether they suspected any foul play; would have in ordinary course examined the dead body to see whether there were any external injuries present on the dead body. In the absence of such evidence, we can legitimately consider that no such injuries, in fact, were present on the dead body at that juncture of time. Added to it, the other oral evidence available on record would clearly show that no such external injuries as emanated from the evidence of P.W. 7, the doctor, were said to have been noticed by any of the witnesses.

19. The post-mortem examination in this case was obviously conducted nearly five days after the death of the deceased. Even according to own showing of P.W. 7, the body by then was in a highly putrefied condition. It may be reiterated here that the body was exhumed from the grave and it was taken out from the coffin. When that be the case, it executes legitimately any amount of suspicion in the mind of any prudent man when it is said that one could notice the external injuries like contusions as mentioned in this case by the doctor as having been present. Contusions will not last long. There appears to be similar scars on account of the presence of the blood clots underneath it. Whatever may be the evidence of the doctor, who has deposed that he noticed three contusions on the neck of the deceased, it cannot be accepted without any pinch of salt, more particularly in the context when the doctor himself examined the deceased for the first time when the dead body was brought to him when he questioned as to any foul play was suspected or coupled with the other oral evidence appearing on record about the total absence of any such external injuries. Under these circumstances, it is difficult for us to accept the medical evidence on that point about the existence of three contusions on the neck of the deceased.

20. The existence of external injuries has not been clinchingly established by the prosecution and in the absence of the same, what is the worth of the opinion given by the doctor is to be seen. It is, therefore, clear from the evidence of P.W. 7 that on internal examination he found the strictures around the hyoid bone at

the greater cornua on the left side, as contused and fracture of the greater cornua of hyoid bone on the left side seen. Perhaps on account of these two observations made by the doctor, they might have been come to the conclusion that it was a case of death due to throttling. They could notice no other external injuries. Whether these two internal features are sufficient enough to arrive at the conclusion in this case or not remains to be seen. Usually whenever there was a fracture of the cornua of the hyoid bone and if it is an ante-mortem fracture, there would be haemorrhage of blood around that part and consequently the presence of the coagulated blood could be seen at the time of post-mortem examination. Post-mortem fracture of the cornua of the hyoid bone in certain cases is also possible. The distinguishing feature in between ante-mortem and post-mortem of the hyoid bone is the absence of haemorrhage in the tissues around the fracture. It is true that P.W. 7 in his evidence said that the fracture was ante-mortem. That part of his evidence becomes his opinion undoubtedly. The reasons in support thereof are expected to be given by the medical man, he being an expert in the field. But curiously he gave no such reason in support of his opinion that it was a case of ante-mortem fracture of the cornua of hyoid bone. Of course, the doctor said the area around the fracture was contused but he was not specific as to whether that was a typical symptom and a decisive factor so as to lead to an unerring conclusion that it was a case of ante mortem fracture. Needless to mention here that it is for the prosecution to clear all reasonable doubts and failure thereof would necessarily make the Court to entertain a doubt arising from out of the circumstances. In the absence of any such medical evidence, haemorrhage around the fractured portion of the cornua, we are not able to persuade ourselves to believe the testimony of the doctor that it was a case of ante-mortem fracture, particularly when post-mortem fracture is also possible one.

21. Here is a case where the dead body was putrefied and was allowed to remain in the grave nearly five days and was exhumed later. So the possibility of the greater cornua hyoid bone getting fractured under these circumstances cannot be ruled out. At any rate, as expressed supra, there exists a grave doubt in our minds, as to whether the fracture of cornua is ante-mortem or post-mortem and about the possibility of cornua getting fractured subsequently after the death at any stage. De hors he same it is difficult for any one to come to a legitimate conclusion that it is a case of death due to throttling particularly when the very existence of external injuries as deposed by the doctor is shrouded in mystery. For the foregoing reasons, we are unable to come to a definite conclusion that it was a case of death due to throttling of the deceased.

22. Added to it, there was no suspicion whatsoever, when the elder sister of the deceased accompanied the deceased to the hospital while taking the dead body. The fact that the dead body was taken by the accused himself to the hospital shall not be lost sight of under the circumstances. According to the evidence of P.Ws. 1 to 3 where they satisfied themselves when the accused swore on the Bible about the natural death of the deceased, we see no compelling reasons for

them at a later point of time to have entertained a doubt about the cause of death of the deceased. It is not coming forth from the evidence of these witnesses that any such reason for them to have entertained such a doubt. One specific reason, which is emanating from their evidence is that on enquiry they came to know that the deceased worked upto 4.00 p.m. in the hospital and she was in a healthy condition. That cannot be a decisive factor that there cannot be any cardiac arrest or death due to any trouble in the heart. Therefore, a doubt has arisen only five days after the burial of the dead body of the deceased. It may be made clear that we are not on the point of delay but we cannot ignore the period. Ignoring the delay for entertaining the doubt it appears to be odd that these witnesses required five clear days for them to suspect a fowl play and the consequential unnatural death of the deceased. These inherent circumstances which are clearly emanating from the record would make the opinion of the doctor that it was a case of death due to throttling highly doubtful. For the foregoing reasons, we are of the clear view that the prosecution is not able to establish that it was a case of unnatural death particularly a death due to throttling.

23. On the factum of cruelty and harassment, there is the oral testimony of P.Ws. 1 and 3. One circumstance which is inherent and inmate in the evidence of prosecution witnesses was that this evidence on the point of cruelty and harassment said to have been meted out to the deceased at the hands of the accused, for the first time came to light only when P.W. 1 sent the report through P.W. 2 to P.W. 9, the Sub-Inspector of Police, and higher officials in the hierarchy. Had the circumstance been in vogue, there would have been any amount of suspicion on the part of P.Ws. 1 to 3 on the date of death of the deceased. When that be not the case of these witnesses, their evidence at a later point of time particularly after five days, that there was a demand on the part of the accused for purchasing a scooter and even after the purchase of scooter, his demands for money did not cease, cannot be accepted without any pinch of salt. In our considered view, the evidence of P.W. 3 does not inspire any confidence of the Court particularly under the circumstances of this case. There is any amount of paucity of evidence on this point, even otherwise except the interested testimony of P.W. 3. For the foregoing reasons we cannot accede the case of the prosecution that the deceased was meted out with cruelty and was harassed at the hands of the accused for the demand of dowry.

24. Well, that be the fact, where there is no convincing evidence on the side of the prosecution about the factum of cruelty and harassment said to have been meted out to the deceased, de hors the same there cannot be any legitimate basis for entertaining the doubt about the unnatural death of the deceased. This further militates against the case of the prosecution, which initially failed to establish the case by clinching evidence that it was a case of death due to throttling.

25. It is not a case, in our considered view, for the foregoing reasons where it

can be said that the prosecution was able to establish that the deceased in this case did die a homicidal death. Therefore, the accused is entitled to every benefit of reasonable doubt.

26. In the result, Criminal Appeal No. 161 of 1996 filed by the accused is allowed and the accused is acquitted of all the charges levelled against him. The bail bond of the appellant herein stands cancelled. Consequently the criminal appeal filed by the state is dismissed.