

Non-reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.594 OF 2009

Donthula Ravindranath @ Ravinder Rao ...Appellant

Versus

State of Andhra Pradesh ...Respondent

J U D G M E N T

Chelameswar, J.

1. This is an appeal against the judgment of the High Court of Andhra Pradesh in Criminal Appeal No.203 of 2005 dated 5th June 2007. By the said judgment, the High Court confirmed the judgment dated 8th February 2005 in Sessions Case No.23 of 2004 on the file of the V-Addl. Sessions Judge (Fast Track Court) at Nizamabad.

2. The sole appellant herein alongwith his parents was tried for the offences under section 304B and 498A IPC. Apart from

that the appellant herein was tried for an offence under section 302 IPC simplicitor while all the three persons were charged and tried for the offence under section 302 read with section 109 IPC. While the sole appellant herein was convicted for the offence under section 302 as well as section 498A IPC, the trial court did not record any finding against the appellant herein insofar as the charge under section 304B IPC is concerned. The other two accused were acquitted of all the charges.

3. Aggrieved by the conviction and sentence, the appellant carried the matter in appeal to the High Court unsuccessfully. Hence the present appeal.

4. The wife of the appellant by name Jyotsna died on 21st May 2003. The deceased Jyotsna and the appellant married sometime in 1998, therefore, the death of Jyotsna took place within seven years from the date of marriage. The prosecution case rested on the circumstantial evidence. The prosecution relied on five circumstances to establish the guilt of the appellant herein, they are — (i) the deceased and the appellant were wife and husband; (ii) they were living in the

same house; (iii) the deceased was harassed by the appellant for additional dowry; (iv) according to the medical evidence though the body was allegedly found hanging it was infact a case of strangulation; and lastly an extra-judicial confession was made by A-1 before PW9.

5. To establish the above circumstances the prosecution examined as many as 16 witnesses. PW1, PW2 and PW4 are the parents and brother of the deceased respectively. PW5 and PW6 are neighbours and PW7 is a resident of the locality who according to the prosecution saw the dead body hanging by a *lungi* to the roof. PW14 is the doctor who conducted post mortem examination on the dead body on 22.5.2003. PW15 is the Sub-Inspector of Police/Station House Officer attached to the V-Town Police Station, Nizamabad, Andhra Pradesh, who initially registered a crime under section 304B IPC on the report (Ex.P1) made by PW1. PWs1, 2 and 4 were examined to prove the factum of harassment for dowry by the appellant herein. PW3 is the husband of the sister of the deceased who was also examined for the purpose of establishing the harassment for dowry. Their evidence remains unimpeached

and both the courts below believed their version insofar as the appellant is concerned.

6. PW7 is a resident of the locality where the appellant and the deceased lived. According to the prosecution, he went to the appellant's house at 8.30 a.m. on the fateful day in order to collect some amount due from A-1. There he found the deceased hanging by a *lungi* to the roof on the first floor of the building. With the hope of saving the life, PW7 disentangled the dead body and laid it on the floor only to find that the lady was already dead. Thereafter, he alongwith the help of another person Bhumaiah (who is not examined) shifted the dead body to the ground floor of the building.

7. According to the evidence of PW1, some unknown person had informed by telephone on the fateful day in the morning hours that the deceased was ill. Thereafter, PW1 passed on the information to PW4, who was residing in the same town (Nizamabad) as the appellant and the deceased, and asked him to ascertain the state of affairs. Thereafter, PW1 along with other members of the family rushed to Nizamabad only to find the dead body of his daughter.

8. The learned counsel for the appellant argued that there is no iota of evidence to establish that the appellant caused the death of Jyotsna. He submitted that even if the offence under section 498A is proved in the absence of any clinching evidence that the appellant caused the death of Jyotsna it would not be safe to convict the appellant for the offence under section 302 IPC as the requirement of criminal law is that the prosecution must establish the guilt of accused beyond all reasonable doubt and in a case of circumstantial evidence the chain of circumstances is so complete that they collectively point only to the guilt of the accused without leaving any scope for doubt. The learned counsel made elaborate submissions impeaching the credibility of the evidence of PW14 the doctor who conducted the post mortem examination. PW14 opined that the cause of death is "shock due to asphyxia on account of strangulation". The learned counsel relied upon various passages from Modi's Textbook of Medical Jurisprudence in a bid to establish that having regard to the nature of the external injuries on the body of the deceased, the death of Jyotsna is a result of hanging but not

strangulation thereby creating doubt about the credibility of the prosecution case.

9. On the other hand, the learned counsel for the State argued that the concurrent finding of fact resulting in the conviction of the appellant under section 302 IPC may not be interfered with in the absence of any illegality in the judgment under appeal.

10. We must at the outset state that one of the five circumstances relied upon by the prosecution to establish the guilt of the appellant i.e. the alleged extra-judicial confession made by the appellant before PW9 is disbelieved by the High Court. Therefore, only four circumstances remain, they are: (i) the appellant and the deceased were husband and wife; and (ii) they were living in the same house. These facts are not even disputed by the appellant. The third circumstance relied upon by the prosecution is that the deceased was harassed by the appellant for additional dowry. The said circumstance is abundantly established by the evidence of PW1 to PW4.

The fourth circumstance that the death of Jyotsna in the opinion¹ of the doctor was caused by strangulation (we do not propose to examine the correctness of the opinion) even if believed need not, in our opinion, lead to the conclusion that it is only the accused who must be held responsible for such strangulation. The building in which the accused and the deceased were living consists of four portions where others were also living.

Even if we give the benefit of the above mentioned doubt to the appellant, the appellant cannot escape his liability for a charge under section 304B IPC which creates a legal fiction. All the ingredients of section 304B are satisfied in the instant case, that the death of Jyotsna occurred within seven years of her marriage the death occurred otherwise than under normal circumstances and that Jyotsna was subjected to harassment which amounted to cruelty within the meaning of section 498A IPC of which charge the appellant is also found guilty by both the courts below.

¹ We notice from the evidence of doctor that he is of the opinion that asphyxia can occur either because of strangulation or hanging. Only by a very close scrutiny of the symptoms the exact cause of asphyxia can be identified.

11. In the light of the abovementioned circumstances, the appellant in our opinion must be found guilty for an offence under section 304B IPC. He was infact charged at trial for the said offence though both the courts below failed to record any finding in this regard. The offence under section 304B IPC is punishable with the sentence for a term which may not be less than seven years but which may extend to imprisonment for life. We, therefore, alter the conviction of the appellant for an offence under section 302 IPC to an offence under section 304B IPC and reduce the sentence to the period already undergone (we are informed that the appellant is in jail for almost a decade). He may be released forthwith if not required in any other case. The judgment under appeal is modified accordingly.

JUDGMENT

.....J.
(RANJANA PRAKASH

DESAI)

.....J.
(J. CHELAMESWAR)

New Delhi;
January 06, 2014.