

CASE NO.:
Appeal (crl.) 300 of 2005

PETITIONER:
Golusula Ellaiah

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 20/07/2006

BENCH:
G P Mathur & R V Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal is directed against the judgment dated 19.3.2002 of the Andhra Pradesh High Court in Criminal Appeal No.1571/1999, affirming the judgment of the first Additional Sessions Judge, Ranga Reddy District in S.C. No.378/1997, convicting the appellant under sections 302 and 201 IPC. The appellant has been sentenced to undergo imprisonment for life for an offence under section 302 IPC and imprisonment for 3 years for the offence under section 201 IPC; both the sentences to run concurrently.

2. On 25.6.1996 at about 10.30 p.m., the accused lodged a complaint with Shamshabad Police Station. In brief, its contents were : He and his wife Ponnamma were returning from Chalivendragudem village where Ponnamma's parents were living. They halted at Shamshabad for his wife's medical check-up at an hospital and thereafter proceeded on foot towards their village (Kothwalguda). At about 9 p.m. when they were passing near HUDA colony, four persons accosted them. Two of them started beating him, while the other two dragged his wife towards the bushes. He managed to escape and ran to his village and informed his elder brother and other villagers. When he returned to the spot along with his brother and other villagers, he found his wife lying in an unconscious state and her ornaments were missing (that is, half a tola of gold gundlu, half tola of gold ear studs and 35 tolas of silver anklets). She was declared dead when she was taken to a doctor.

3. The above complaint was registered as Crime No.130/96 under sections 302 and 379 IPC. A panchnama was drawn at the scene of occurrence and an inquest was held and the investigation was taken up. On 30.6.1996, the parents of the deceased approached the Investigating Officer and expressed a suspicion about the accused. The IO found that the accused had absconded after the incident. He was apprehended in his village on 3.7.1996 and brought to the Police Station, where he gave a voluntary confessional statement (Ex. P-4) in the presence of Panch witnesses. It came to light that the accused had pledged the silver anklets (MO-2) of the deceased on 15.6.1996, the gold ear studs (MO-3) on 18.6.1996 and the gold gundlu that is a string of 39 gold beads (MO-1) on 25.6.1996 with a moneylender at Shamshabad, namely, Sampathraj (PW-4). In pursuance of the information furnished by the accused, the IO seized the ornaments (MOs. 1, 2 and 3) as also pawn receipt

books containing the duplicate of pawn receipts being Exhibits P-1, P-2 and P-3 from PW-4, and his statement was recorded. The accused also took the IO and the Panch witnesses to his house and produced the pledge Receipt No.8864 dated 15.6.1996 and Receipt No.8882 dated 18.6.1996 relating to the silver anklets and gold ear studs.

4. On completion of the investigation, the accused was charged with the offence of murdering his wife under section 302 and causing disappearance of evidence under section 201 IPC. The prosecution examined 9 witnesses.

4.1) The father of the deceased (PW-1) stated that his daughter was married to the accused on 8.3.1996, about 3 months prior to the incident; that he had given half tola gold gundlu to his daughter; that the parents of the accused had given the gold ear-rings (MO-3) and silver anklets (MO-2) to the deceased at the time of marriage; that the accused had pledged all these ornaments; that on the fateful day, the deceased and the accused had left his house together; that on the same day in the late evening, the accused came and informed that the thieves had waylaid and attacked him and his wife. PW-1 also stated that a few days after the incident, he approached the Police and expressed his suspicion about the accused. The mother of the deceased (PW-2), reiterated what was stated by her husband and also stated that when her daughter came to her house a week prior to the incident, she did not have the silver anklets and ear-studs and she was having only the gold gundlu and that she (her daughter) had informed them that the accused had pledged the articles and squandered the money.

4.2) Sattaiah, brother of the accused (PW-3) stated that the accused came and informed him around 9 p.m. on the fateful day that when he was coming with the deceased, some thieves attacked them; that he along with other villagers rushed to the scene of occurrence; and that the accused told him that the thieves had committed theft of the ornaments of the deceased.

4.3) Sampathraj, a moneylender (PW-4) stated that the accused and his other family members were coming to his shop for taking money by pledging articles. He also referred to the pledging of silver anklets on 15.6.1996, gold ear-studs on 18.6.1996 and gold gundlu on 25.6.1996 by the accused. He stated that he advanced the accused Rs.1,500 against the pledge of gold gundlu. He also stated that the silver Anklets and gold ear-studs (MOs. 2 and 3) were seized from his shop along with receipt books (Ex. P-1, P-2 and P-3) from his shop, a few days after the last pledge (25.6.1996). N. Anjaiah (PW-5) stated that the accused gave a voluntary confessional statement (Ex. P-4) about murdering his wife, that he and other witnesses went to the shop of PW-4 and in their presence, MOs. 2 and 3 and receipt books P-1, P-2 and P-3 were seized; and that, subsequently, the gold gundlu was shown to him at the Police Station.

4.4) Dr. N. Kotaiah (PW-6) who had conducted the post mortem over the dead body of the deceased, described the injuries noticed. He stated that the death was due to asphyxia as a result of throttling. He detailed the external injuries (bruises around the throat) and incised wound on the lateral side of the right eye of the deceased, and stated that the internal examination disclosed fracture of the hyoid bone.

4.5) PW-7 was a Panch witness. PW-8 was the S.I. of Police

who had received the written complaint (Ex. P-1) from the accused and registered the case as Crime No.130/96. The I.O. (PW-9) gave evidence about the investigation, voluntary confessional statement of the accused in the presence of Panches, seizure of MOs. 1 to 3 and receipt books P-1 to P-3 from PW-4.

5. On the said evidence, the trial court by its judgment dated 30.7.1999 found the accused guilty of the offences under sections 302 and 201 IPC. The appeal filed by the accused was dismissed by the Andhra Pradesh High Court, affirming the findings of the trial court. The courts have concurrently held that though there were no eye-witnesses to the incident, the prosecution had proved the guilt of the accused beyond doubt by the following chain of circumstantial evidence :

(a) The accused admitted that he was with the deceased when the incident occurred. In effect, the deceased was last seen with the accused. This was admitted by the accused in his complaint (Ex. P-11) and to his brother (PW-3);

(b) In his complaint (Ex. P-11), the accused stated that the thieves who attacked him and his wife, had taken away her ornaments (half a tola of gold gundlu, half a tola of ear-studs and 35 tolas of silver anklets). But the accused had himself pledged the said ornaments with PW-4 on various dates \026 on 15.6.1996 (silver anklets), on 18.6.1996 (gold studs) and on 25.6.1996 (gold gundlu) under Ex. P-1, P-2 and P-3 and they were recovered from PW-4 on the basis of disclosure made by the accused. This clearly showed that the accused had made a false statement in his complaint that the thief had stolen them;

(c) Though the accused stated that he was beaten by two of the attackers, there were no injuries on his body.

6. The High Court has relied on the decision in *Birbal v. State of Madhya Pradesh* [2000 (10) SCC 213] where, in somewhat similar circumstances, this Court had affirmed the conviction based on circumstantial evidence consisting of three circumstances : (i) the accused and the deceased leaving together (ii) the accused returning alone and giving a false explanation that the deceased would come later; and (iii) statement of the accused while in custody leading to the discovery of the dead body.

7. We find that the concurrent findings recorded by the courts below are based on cogent reasoning. The chain of circumstances pointing out conclusively to the guilt of the accused, is complete. The story of thieves attacking him and his wife is a concoction intended to shift the blame. However, as the appellant has assailed the decision of the High Court on several grounds, we will deal with them.

8. The first submission is that the ornaments of the deceased were not in fact taken away by the accused. The learned counsel for the appellant relied on the evidence of PW-1 that when he went to the scene of occurrence and saw the body of his daughter, he found the Mangalasutram, Mettelu and nose stud on the body. According to the learned counsel, the items referred were nothing but MOs. 1, 2 and 3 --- gold gundlu, silver anklets and ear-studs. It is contended that if all the three ornaments were found on the body of the deceased, there was no question of the accused pledging them or putting forth any false story. This contention, to say the least, is bereft of any merit. What PW-1 found on the body of the deceased was a

Mangalasutram (a yellow thread worn by married women), Mettelu (toe rings) and nose stud. On the other hand, PW-1 has described the missing ornaments of the deceased, which were pledged by the accused, as gold gundlu (which is a string of 39 gold beads), silver anklets and ear-studs. Therefore, the contention that the pledged ornaments were found on the body of the deceased and they could not have been pledged by the accused, is wholly untenable. In fact, this contention runs against the defence of the accused and the specific statement of the accused in the complaint dated 25.6.1996 that the thieves had stolen the three ornaments (half tola gold gundlu, half tola ear-studs and 35 tolas of silver anklets). If they were still on the body of the deceased, they could not have been stolen.

9. The second contention is that there is a variation in the evidence of PWs.1 and 2. It is pointed out that while PW-1 has stated that he gave half a tola of gold gundlu, ear-studs and Mettelu to his daughter, his wife has stated that what was given to the deceased was only half a tola of gold gundlu (consisting of 39 gold beads) and that MO-2 and MO-3 (silver anklets and ear studs) were given by the parents of the accused. Who gave the ornaments to the deceased is not material. What is relevant is what was alleged to be stolen, but was found to have been pledged. Further, PW-1 himself has clarified in his further examination-in-chief that the gold gundlu (MO-1) was given by him to his daughter, and the silver anklets and ear-studs (MOs.2 and 3) were given to his daughter by the parents of the accused at the time of marriage.

10. The third contention of the accused is based on the evidence of PW-3, the brother of the accused, who had stated that when he went to the scene of occurrence and enquired with the deceased (as to what happened), she told him that four persons came and beat her and that after informing him so, she collapsed. It is contended that this piece of evidence clearly established that the accused and deceased were waylaid and attacked by four unknown persons. We find no merit in the contention. PW-3 is the elder brother of the accused and is obviously interested in saving him. PW-3 was treated as hostile and cross-examined and it was suggested that he had tried to improve upon his statement given to Police wherein he had stated that the deceased was unconscious when he went to the site of occurrence. In the complaint, the accused clearly stated that he escaped from the attackers, ran to his village, informed his elder brother and other elders of the village and that immediately they followed him and came to the spot where his wife was lying in an unconscious condition. If the deceased was in a conscious state, when the accused, his brother and other villagers reached the spot, the accused would have certainly mentioned it in his complaint and, at all events, would have examined the villagers. The statement of PW-3 that he went on a scooter earlier and found the deceased in a conscious condition, is contrary to the statement of the accused in his complaint that his brother and villagers followed him, which shows that he, his brother and villagers reached the scene of occurrence together.

11. The fourth contention is that the seizure of the ornaments was not established. Reference is made to the evidence of Investigating Officer, PW-9, who stated that MOs.1 to 3 (gold gundlu, silver anklets and ear-studs) were seized from the shop of PW-4. PW-4 also stated in his examination-in-chief that MOs.1 to 3, which were pledged with him by the accused, were handed over to the police when police came to his shop along with the accused. But in his cross-examination, he stated that he

had kept the ornaments with his bankers, that he brought the said articles from the bankers and produced them before the Police only on the next day. PW-5 also had stated that only MOs. 2 & 3 were seized from the shop of PW-4 and that MO1 was shown to him in the police station. The learned counsel, therefore, submitted that there was no valid seizure in the presence of Panch witnesses. We may note that both PWs.4 and 5 were also treated as hostile and cross-examined. Their evidence however clearly establishes that the receipt books P-1 to P-3 were seized from PW-4 and MOs.2 and 3 were also seized from the shop of PW-4. Even if there is any discrepancy as to whether MO.1 was seized at the shop of PW-4 or whether he brought it and gave it to the Police Station on the next day, the said discrepancy has no relevance. The evidence of PW-4 clearly establishes that the accused had pledged MOs.1 to 3 with him. The evidence of PW-4, PW-5 and PW-8 also establishes that they were recovered from PW-4 on the information furnished by the accused.

12. No other contention was urged. The appellant has not been able to make out any infirmity in the order of the High Court. The appeal has no merit and is, accordingly, dismissed.