

CASE NO.:
Appeal (crl.) 1425 of 2003

PETITIONER:
DASARI SIVA PRASAD REDDY

RESPONDENT:
THE PUBLIC PROSECUTOR, HIGH COURT OF A.P.

DATE OF JUDGMENT: 20/08/2004

BENCH:
P. VENKATARAMA REDDI & B.P. SINGH

JUDGMENT:
J U D G M E N T

P. VENKATARAMA REDDI, J.

By the impugned judgment, the High Court of Andhra Pradesh reversed the acquittal recorded by the Sessions Judge and convicted the appellant under Section 302 IPC and sentenced him to life imprisonment. However, the acquittal under Section 498-A was confirmed.

The appellant, who was an elementary school teacher, married the victim Lakshmi Devi in the year 1991. A daughter and son were born to them in 1993 and 1995 respectively. At the crucial time they were residing in Pulivendla, Cuddapah District.

It is the case of the prosecution that there were intermittent quarrels between the couple and there were also demands from the appellant for additional dowry. The accused even suspected the fidelity of his wife. On the morning of 20th April, 1996, Lakshmi Devi was found dead lying on a cot with injuries on the neck and forehead. A jute twine rope was found underneath the cot, according to some of the witnesses. The first one amongst the prosecution witnesses who noticed her unnatural death was her brother (PW3) who was a lecturer residing in the same town. He went to the house of the accused at about 6.30 a.m. having been informed by the accused that something happened to his sister. The accused himself took PW3 to his house. According to the prosecution, the accused made himself scarce thereafter. PW3 sent a jeep to bring his parents living in a nearby village. The parents of the deceased, her brother and other relations came down to Pulivendla after 9 a.m. Suspecting foul play and the role of the accused, the father of the deceased (PW1) gave a report (Ex. P1) to the police at about 11 a.m., on the basis of which the Head Constable (PW8) registered the crime and prepared the FIR. In that report, PW1 stated that ever since his daughter and son-in-law started residing at Pulivendla, they used to quarrel in regard to some family matters. She was not allowed to come to his house for 'Ugadi' festival. PW1 then mentioned about the information he received through a person who came in a jeep and his arrival at Pulivendla with family members. PW4 stated that on the observance of the dead body of his daughter, he was having doubt that his son-in-law might have killed his daughter by hanging.

PW8 visited the scene of offence and recorded the

statements of PWs 1 to 3 and others, prepared a rough sketch of the scene of offence. He could not find the accused. The inquest of dead body was held on 20th April, 1996 between 12.00 and 15.00 hours by the Mandal Executive Magistrate, Pulivendla (PW7) in the presence of V.A.O. and others, pursuant to a request received from the ASI (PW8). In the inquest report, it was noted that the deceased would have died in the early hours of 20th April, 1996 by being strangled with a rope tightened around the neck when she was asleep and that the appellant was the suspect. It was noticed that there was a black mark around the neck, a scar wound on the side of the left arm-pit. The dead body was sent for postmortem a day later i.e. on 21.4.1996 at 2 p.m. The autopsy was done by PW9, Civil Assistant Surgeon of Government Headquarters Hospital, Cuddapah. Dr. G. Swatantra Devi also joined him in conducting the autopsy. Ex. P8 is the postmortem certificate. The body was in a putrefying state. The head, neck, face and chest bloated up. Skin was peeling off over various parts of the body. The hair of head was coming out easily. Tongue was protruded. Bloodstained frothy discharge was coming out through nose. The external injury noted was contusion of the size of 1= c.m. width all around the neck encircling the middle of the neck. The following internal injuries were noticed:

"Neck Muscles contused on left side. Hyoid bone\027 left greater horn fractured in the middle. Surrounding tissues contused even on right side, tissues around hyoid bone contused.

Larynx \026 Congested and edematous
Chest - Chest muscles congested 3rd, 4th, 5th ribs on left side fractured anteriority.
Lungs - Markedly congested exuding dark coloured blood on sectioning and pressing it.
Heart - Soft, Pale dilated and empty.
Stomach \026 Empty.
Liver \026 Spleen, leading congested.

Intestines, tissues of abdomen filled with foul smelling gasses.

Bladder empty, Uterus, ovaries tubes congested. Cavity empty.

Skull \026 Diffuse contusions seen below the scalp, no fracture of skull. Brain matter liquefied."

It was noted in Ex. P8 and reiterated by PW9 that the death would have occurred about 48 hours prior to postmortem. The cause of the death is stated to be asphyxia due to strangulation.

The accused was arrested by PW8 on 6.5.1996 at his house. PW10\027the Inspector of Police took up further investigation on 15.7.1996. He examined PWs 4 & 6, who were neighbours of the accused at that stage and filed the charge sheet. After committal, the trial was taken up by the District and Sessions Judge, Cuddapah. Charges under Sections 498-A and 302 IPC were framed.

The learned trial Judge raised the following points for consideration.

1. Whether Dasari Lakshmi Devi's death is homicidal?

2. Whether Dasari Lakshmi Devi died during the

intervening night of 19/20-4-1996?

3. Whether the accused had motive to kill his wife (Lakshmi Devi)?

4. Whether the deceased (Lakshmi Devi) was last seen in the company of the accused?

5. Whether the plea of alibi raised by the accused is true?

6. Whether the accused absconded from 20.4.1996 onwards?

7. Whether the prosecution proved beyond reasonable doubt that the accused alone murdered his wife?

8. To what result?"

The death was held to be homicidal because the medical evidence reveals that there was fracture of ribs which means that the victim was subjected to violence at the time of strangulation.

On point No.2, the learned Sessions Judge came to the conclusion, on the examination of medical evidence and the text books on Medical Jurisprudence, that Lakshmi Devi's death was not on the night intervening 19th & 20th April, 1996 but it was around 2 p.m. on 19.4.1996. He quoted extensively from Dr. Modi's Medical Jurisprudence and Toxicology. Having noticed three stages in putrefaction which starts after rigor mortis completely passes off, the learned trial Judge observed as follows:

"The medical evidence clearly shows that the body was in the third stage as skin was peeling off and hair from the head was coming out easily. So, according to Dr. Modi, this is possible only between forty eight to seventy two hours. There is yet another indication. According to Dr. Modi, the brain becomes soft and pulpy within twenty four to forty eight hours in summer and becomes a liquid mass from three to four days. In this case, the postmortem certificate reveals that the brain was liquefied and there was no injury to the skull. This again points out that the time of death could be after forty eight hours. Therefore, the body was in the third stage of de-composition i.e., forty eight hours. These features support the joint view of the Medical Officers in the postmortem certificate that the death could be 48 hours prior to the postmortem examination."

It is on such reasoning the trial Court fixed the time of death at about 2 p.m. on 19th April, 1996 which is obviously against the prosecution case.

Coming to the third aspect of motive, the allegations of the accused demanding additional dowry or suspecting the fidelity of his wife were examined and the learned trial Judge held that the evidence did not establish these allegations beyond doubt. Inter alia, the trial Court took account of the fact that in Ex. P1\027report given by the father of the deceased, nothing was said about dowry harassment. He only stated that there were quarrels between the wife and husband in relation to domestic affairs. Even at the time of inquest, nothing was stated about the demand of additional

dowry. Moreover, PW1 stated in his cross examination that the demand of dowry was only three years prior to the fateful day. The trial Judge ultimately concluded that there were differences between the wife and husband for unknown reasons and the prosecution could only establish that much. Whether the accused was last seen in the company of the deceased on the night of 19th April, 1996 is the next question which was addressed by the trial Court. The trial Court rejected the evidence of PW4\027a retired Government Servant, who is related to PW1. PW4 was residing in the same locality though not an immediate neighbour. He spoke about the quarrels between the deceased and the accused and the deceased narrating to him about the harassment meted out to her for not getting additional dowry. According to PW4, it was on his advice the accused shifted his residence to his locality. PW4 then stated that on 19.4.1996 at about 8.30 p.m. the deceased was at her house in the company of children of the neighbourhood. At that time, the accused came and the accused and his wife with children went inside. He further stated that between 10.00 to 10.30 p.m., there was some quarrel in the house and he observed it from outside his house. He came to know of the death in the early morning the next day and noticed the dead body of Lakshmi Devi on the cot with marks around the neck and a contusion on the forehead. PW4 also stated that he noticed the accused when he went inside the house but later on he slipped away. Though this witness stated that on the evening of 20th April, 1996 the Inspector of Police examined him for the first time and thereafter the Inspector once again examined him after three months, the trial Court found that PW4 was examined for the first time by the Inspector of Police on 15.7.1996 i.e. about three months after the offence. The trial Court therefore doubted the veracity of his version.

The trial Judge also adverted to the fact that in the inquest report it was not mentioned that the accused and his wife were last seen alive at 8.30 p.m. by PW4 or any other witness. The learned trial Judge was also not inclined to believe PW4 as he did not say before the Investigating Officer that he had seen the accused going inside the house at 8.30 p.m. On the discussion of the evidence, the trial Judge remarked that the prosecution version that the deceased was last seen in the company of the accused in the night of 19.4.1996 was highly doubtful. The learned trial Judge observed that the finding on Point No.2 (time of death) further magnified the doubt on the correctness of the prosecution case.

The plea of alibi set up by the accused was disbelieved. The accused took the plea that he went to his parents' house in another village, having applied for leave and that he left for his house on the early morning of 20th April, 1996. The trial Judge felt that the evidence of DWS 1 to 3 did not establish that the accused was throughout in the parental house on the 19th April and he was seen leaving the village on the morning of the following day.

As regards abscondence, the trial Court gave the finding in favour of the accused by reason of the evidence of PW3\027the brother of the deceased that the accused came to his house at 6.30 a.m. on 20th April, 1996 and took him to his house indicating that something happened to his sister. The learned trial Judge observed that the accused did not abscond initially but when the people gathered, he left the scene. In such a situation, abscondence cannot be put against him.

Coming to the last point, following his findings in

regard to the time of death, the last seen evidence and the absence of motive, the Sessions Judge held that from the circumstances established by the prosecution, it is not possible to say beyond reasonable doubt that the accused and accused alone killed his wife.

The High Court agreed with the trial Court that there was no immediate motive that prompted the accused to kill his wife. The High Court also affirmed the finding of the trial Judge that the plea of alibi set up by the accused was not well substantiated. The High Court however differed with the findings of the trial Court in regard to the time of death and the circumstance of 'last seen'. Having done so, the High Court adverted to the post-crime conduct of the appellant coupled with the false plea of alibi set up by him and came to the conclusion that the accused must have committed the murder.

We must examine whether the reasoning of the High Court is such as would justify the reversal of 'not guilty' verdict recorded by the trial Court. The High Court rightly took note of the recognized limitations on interference with the order of acquittal, but in the actual application thereof, the High Court, in our view, erred in reversing the acquittal. As regards the time of death, the High Court took note of the fact that even according to the medical evidence tendered by PW9, the occurrence of death between 38 to 40 hours cannot be ruled out as it was summer time. If so, the time of occurrence could be in the night or midnight of 19th April, 1996. The High Court pointed out that the time of occurrence cannot be fixed with precision merely based on the opinion expressed in the text books on Medical Jurisprudence which only sets out certain broad indicators. We shall proceed that the High Court's view on this aspect is correct especially in view of the clarification given by PW9 himself. Therefore, we shall assume that the murder had taken place on the night of 19th April or in the early hours of 20th April.

In drawing an inference that the accused must have been in the house on the crucial night, the High Court mainly relied on the evidence of PW4 and also relied on the fact that the accused set up a false plea of alibi. As already noticed, the evidence of PW4 was to the effect that he saw the accused entering his house at about 8.30 p.m. on 19th April, 1996. He also spoke to the fact that he observed some quarrel going on between the husband and the wife beyond 10 p.m. The High Court repelled the contention that the police examined PW4 three months after the incident on a wrong assumption that PW8\027the Head Constable, initially examined PW4 after the case was registered. But, it is clear from the evidence of PW8 that he did not examine PW4. PW10 also clarified that he examined PW4 once only i.e. on 15.7.1996. There is absolutely no reason why PW4 who was admittedly related to the deceased and who was in the house of the accused soon after the incident, did not come forward to give the statement about the facts observed by him. There is no reason to think that the police would not have examined him immediately if he was the person who had seen the deceased last in the company of the accused on the night of 19th April, 1996. Moreover, PW4 came forward with an improbable version that he observed the quarrel from his house which is separated by four or five houses from the house of the accused. PW10\027the I.O. categorically stated that PW4 did not tell him that at 10 p.m. he observed the quarrel at the house of the accused. That means, PW4 did not hesitate to go to any extent to help the

prosecution to substantiate the 'last seen' version. The High Court dismissed the criticism against PW4's evidence by merely observing that there was no reason for him to falsely implicate the accused. We are of the view that the High Court should not have upset the finding of the trial Court in regard to the credibility of evidence of PW4 and buttress its conclusion on the last seen factor by relying on PW4's evidence. As far as PW5 is concerned, the High Court concurred with the trial Court's view that his evidence cannot be believed.

The High Court then observed that since the plea of alibi is found to be false, it can be inferred that the accused was present in the house in the night of 19.4.1996. The High Court after adverting to the observations in *Prabhakar Vs. State of Maharashtra* [(1982) 1 SCC 426] drew the further inference that only the accused and the deceased were in the house at the relevant time and there was no possibility for others to enter into the house. These observations were primarily based on the unreliable evidence of PW4. The High Court's approach in seeking support from the decision in *Prabhakar's* case is clearly unsustainable. The facts and circumstances in that case unerringly pointed to the presence of the accused at the crucial time and there was no possibility of third person being there. The inferences drawn in that case cannot therefore be pressed into service here. If we exclude PW4's evidence, there is no evidence whatsoever to establish the presence of the accused in the house on the crucial night. The fact that the appellant could not establish by cogent evidence that on the night of 19th April, 1996 he remained at the house of his parents in another village does not lead to the necessary inference that the appellant must have remained at his house on the night of 19th April, 1996. However, there is one circumstance which is suggestive of the strong possibility of the presence of the accused at his house. As per PW3's evidence which was believed by the trial Court, the appellant contacted him in the morning at 6 a.m. and brought PW3 to his house giving a hint that something untoward happened to his sister (i.e. the deceased). Added to this, the accused, in the normal course, is expected to be at his house in the night. However, these factors need not give rise to an irresistible inference that the accused remained in the house in the previous night and the accused alone must have been responsible for the murder. At best, it can be said that the view taken by the trial Court is not the only possible view. But, that is not enough to reverse the acquittal.

A strong suspicion, no doubt, exists against the appellant but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case. The distance between 'may be true' and 'must be true' shall be fully covered by reliable evidence adduced by the prosecution. But, that has not been done in the instant case. If, coupled with the circumstance unfolded by the evidence of PW3, the evidence of PW4 had been believed, it would have gone a long way in substantiating the prosecution case. But, in the instant case, apart from the fact that the appellant was at his house on the morning of 20th April, 1996, there is no other circumstance whatsoever which connects the accused to the crime, though serious suspicion looms large about his involvement. The view taken by the trial Court that the prosecution could not establish the complete chain of circumstances incriminating the accused is a reasonably possible view and the High Court should not have disturbed the same. Having regard to

the state of available evidence, the benefit of doubt given to the accused by the trial Court warranted no interference by the High Court.

In the result, we allow the appeal, set aside the judgment of the High Court and affirm the verdict of acquittal returned by the trial Court. The appellant shall be released forthwith from the jail.

JUDIS