SUPREME COURT OF INDIA

Pothakamuri Srinivasulu @ Mooga Subbaiah

Vs.

State of Andhra Pradesh

Crl.A.No.234 of 2001

(R.C. Lahoti and Brijesh Kumar JJ.)

26.07.2002

JUDGMENT

R.C. Lahoti, J.

1. This appeal by special leave preferred by the sole accused-appellant lays challenge to his conviction under Sections 302 and 397 IPC by Additional Sessions Judge, Ongole, maintained in appeal by the High Court. The sentence passed on the appellant is imprisonment for life with a fine of Rs.500/-, in default to suffer simple imprisonment for one year, for offence under Section 302 IPC and rigorous imprisonment for seven years for offence under Section 397 IPC.

2. The prosecution case found proved by the Trial Court and the High Court is that the deceased Venkayamma @ Rathamma, age about 70 years, resident of village Edugundlapadu (P.S. Maddipadu) was collecting the branches of trees at about 10 a.m. on 8.7.1994 in the garden known as 'Subabul Garden' belonging to PW4. The accused who was employed as watchman by the owner of the garden came to the garden and found the deceased alone. She was wearing bangles which assuming to be of gold were asked for by the accused which the deceased refused to give saying that the same were of brass. Then the accused demanded the pair of ear studs which the deceased was wearing. She refused to part with the ear studs. The accused picked up a piece of stone and with it hit on the head of the deceased as a result of which she fell down. The accused took the sickle from the deceased and inflicted injuries on the person of the deceased with sickle. He also cut the ear lobes of the deceased with the sickle so as to remove the ear studs. In this process the clothes of the accused got stained with blood. The accused then left the garden. While leaving the garden he was noticed by PW2, another watchman of the garden, and PW3, a shepherd. At the same time PWs2 and 3 heard some noise emanating from inside the garden whereupon they entered the garden and found the deceased lying injured. On questioning, the injured narrated the incident as had taken place with her and naming the accused-appellant. PW1 is the sister of the deceased living in the same village who also rushed to the place of the incident upon learning about the incident. To her also the deceased narrated what had happened to her. The deceased named the accused to PW1 also. The injured was removed to government hospital, Ongole

and admitted for treatment. PW10, the duty doctor found the following injuries on the person of Venkayamma:

1. Incised wound 1" x ". 3" below right ear. Blood oozing from it.
2. Cut injury 1" x " in lower part of both ears. Ear lobes lost. 3. Red contusion 6" x 4" right side of the neck. 4. Red contusion 2" x 2" on right side of the head 4" above right ear.
5. Contusion 2" x 1" at left eye.

3. Venkayamma, when examined by the doctor, was unconscious. She was unable to speak and was not moving her left upper and lower limbs. Two days thereafter she died. The post-mortem examination confirmed a number of injuries having been suffered by the deceased internally consequent upon the external injuries. In the opinion of the doctor performing post- mortem, contusions on the person of Venkayamma could have been caused by stone while incised wound and cut injury could have been caused by sickle. The head injury was the cause of death.

4. The duty head constable of Ongole police station, having learnt of the incident, reached the hospital soon after the admission of the injured thereat. As the injured was not in a position to give a statement, the head constable recorded the statement of PW1 which was sent to the police station and registered as first information report of the incident on 8.7.1994 at 7 p.m.. Initially an offence under Section 394 IPC was registered which on the death of the injured was converted into one under Sections 397 and 302 of IPC.

5. On 16.7.1994, at about 5 p.m., PW15, the sub-inspector arrested the accused in the presence of PW7 and PW8. A pair of ear studs was recovered from the accused which was seized and later on identified by PW1 as belonging to her sister. Upon an information given by the accused a sickle and a shirt belonging to the accused, both stained with human blood were recovered. The accused also pointed out a piece of stone, at the place of incident, which too was stained with human blood and was allegedly used in inflicting injuries to the victim. It was seized. The piece of stone, the sickle and the shirt were all found to be stained with human blood by the forensic science laboratory.

6. The Trial Court and the High Court have convicted the accused-appellant by placing reliance on the dying-declaration made by the victim to the PWs1, 2 and 3 as also on recovery of pair of ear studs, satisfactorily identified by PW1 as belonging to and worn by the deceased at the time of the incident, and the recovery of blood-stained sickle and shirt.

7. We find no reason to disbelieve the dying declaration made by the deceased to the witnesses PW1, 2 and 3. They are all residents of the same village and are natural witnesses to the dying declaration made by the deceased. No reason is assigned, not even suggested to any of the three witnesses, as to why at all any of them would tell a lie and attribute falsely a dying declaration to the deceased implicating the accused-appellant. Though each of the three witnesses has been cross-examined but there is nothing brought out in their statements to shake their veracity.

8. It was submitted by Ms. Nanita Sharma, the learned counsel for the appellant that for several reasons the dying declaration cannot be believed. She submitted that looking to the nature of the injuries suffered by the deceased possibly she could not have spoken and must have become unconscious instantaneously. However, no such suggestion has been made to any of the witnesses including the two doctors who respectively conducted the medico-legal examination and post- mortem examination of the victim. On the contrary the three eye-witnesses have positively stated that the deceased was speaking when they had met her soon after the incident. The victim had died two days after the incident. We cannot in the face of this positive evidence just assume that the injured must have become unconscious and speechless because of the injuries and discard on such assumption the dying declaration deposed to by independent witnesses corroborated by the promptly lodged FIR.

9. Next it was submitted by the learned counsel for the appellant that according to PW1 she had first gone to the police station where the victim had made a report of the incident and then they had proceeded to the hospital. An adverse inference ought to be drawn against the prosecution for withholding the FIR lodged by the victim herself. Such argument was advanced before the Trial Court and the High Court also. It has been pointed out by the Trial Court that the witness is a rustic village woman and such a statement appears to have been made by her in a state of confusion. If it was so as is being suggested then the police officers who have appeared as witnesses, especially the one who has proved the FIR, should have been asked whether there was any report of the incident, then the one originating in the statement of PW1, made at the police station and that too by the injured herself. No question was asked nor any suggestion made to the witnesses on the lines taken in the argument of the learned counsel.

10. It was also submitted by Ms. Sharma, the learned counsel for the appellant that PW1 states to have been informed of the incident by some children of the village but those children were not examined. We do not think it is necessary that the children, without regard to their age or description being available, can be held to be such witnesses from whose non-examination an adverse inference can be drawn against the prosecution. At best the children were such as had learnt about some happening in the garden of PW4 and they had rushed to tell this to PW1. What is relevant and material is the dying declaration made by the victim to PW1 and in that regard the children were of no relevance.

11. In our opinion, the dying declaration made by the deceased, which finds amply proved by the testimony of PWs1, 2 and 3, is by itself enough to sustain the conviction of the accused-appellant.

12. The ear lobes of Venkayamma were cut. PW1 proves that the deceased Venkayamma used to wear ear studs which were stolen away in the incident. So far as the recovery from the accused is concerned the witnesses to the recovery namely, PWs 7 and 8 have not supported the prosecution case and therefore the recovery is rendered doubtful. However, the factum of ear studs having been removed from the person of the victim by cutting her ear lobes is proved. The cause of death of the victim is inseparably connected with the removal

of ear studs, and therefore, the commission of the offences under Sections 302 and 397 of IPC is also inextricably inter-connected in the facts and circumstances of the case. It can safely be held that the accused was responsible for causing injuries to Venkayamma and was also responsible for removing the ear studs. We do not consider it necessary to deal with evidence relating to recovery of blood-stained shirt and blood-stained stone and sickle with which the injuries are said to have been caused to the victim.

13. We find no infirmity in the conviction of the accused- appellant and the sentences passed thereon which are maintained and the appeal is dismissed.