SUPREME COURT OF INDIA

Vadugu Chanti Babu

Vs.

State of Andhra Pradesh

Crl.A.No.1168 of 2001

(N.Santosh Hegde and Bisheshwar Prasad Singh JJ.)

13.08.2002

JUDGMENT

N. Santosh Hegde, J.

The appellant was convicted by the learned Sessions Judge, Mahila Court, Vijayawada for a charge of having committed the murder of his wife V. Siva Parvathi by throttling her in the house of his father-in-law (PW-1) in Kanakadurgapuram, hamlet of Rayyuru Village on 8.2.1993. His conviction and sentence was upheld by the High Court of Judicature, Andhra Pradesh at Hyderabad. Therefore, the appellant is before us in this appeal. Briefly stated the prosecution case is that the marriage of the appellant was performed with the deceased about 4 years prior to the incident. The appellant, according to the prosecution, was not holding any permanent job and was addicted to drinking and gambling. Therefore, there was a marital discord between the husband and wife. It is stated that on 7.2.1993 the appellant went to the house of PW-1 in a drunken state and took his daughter Lakshmi along with him on that night. On 8.2.1993, father-in-law (PW-1) and Mother-in- law (PW-2) had gone to their field for work at about 9 a.m. It is stated that PW-1 returned to his house and then he noticed the appellant throttling the deceased in the house on the southern side of the courtyard. PW-1 supposed to have raised cries when the accused left the place. Then PW-1 called his neighbour PW- 5. She came and attended the deceased and found that the deceased had died by then. PW-1 at that point of time told PW- 5 that it is the appellant who throttled the deceased. Thereafter, it is stated that PW-2 the mother-in-law came to the house on hearing of her daughter's death. The first information was lodged only at about 11 p.m. by PW-1, which is marked as Ex.P-1, which was registered by Sub-Inspector of Police PW-6 who sent an express message to his superior PW-9 the Inspector of Police who received the information and proceeded to the village at about 10.15 and halted there for night. On the morning of 9.2.1993, PW-9 held the inquest in the presence of PW-7 the Village Administrative Officer (VAO) and noticed the body was "fresh" with external injuries indicating strangulation. The body was sent to post-mortem examination and the medical report shows that the doctor (PW-8) who conducted the post-mortem was unable to find any external injury on the body. He noticed that decomposition had started and also rigor mortis had set in on the limbs. He sent the stomach contents as well as the hyoid bone for chemical

analyzer and expert's opinion and received an information from the chemical analyzer that the stomach contents did not contain any poisonous substance and the expert who examined the hyoid bone found that the bone was not fractured or damaged. On receipt of the said information and on receiving a questionnaire from investigating officer, PW-8 doctor opined that he is unable to give any opinion as to the cause of death. It is stated that the investigating officer was unable to trace the appellant immediately. However, he came to know that he was admitted to a private Nursing Home at Vijayawada. Therefore, his statement was recorded on 13.2.1993. Thereafter, he was arrested on 17.2.1993. On the above basis, the appellant was charged for having committed the murder of his wife. In the absence of any positive and favourable medical opinion, the prosecution has relied upon the ocular evidence of PW-1 and subsequent circumstantial evidence of PW-5 who arrived immediately after the incident in question. De hors these evidences the rest of the evidences are not proximate to the incident. However, the learned Sessions Judge preferred to rely upon the oral evidence of PW-1 and inquest panchnama as attested by PW-7 as against the medical evidence including the substantive evidence of PW-5 to come to the conclusion that the deceased had died a homicidal death due to strangulation and accepting the evidence of PWs. 1 and 5 held the appellant guilty of the charge and convicted him, as stated above. In appeal the High Court though did not rely upon the medical evidence but relying on the oral evidence of PWs 1, 5 and 7 agreed with the Sessions Court and dismissed the appeal. In this Court, Shri M.N.Rao, learned senior counsel appearing for the appellant contended that the prosecution has utterly failed to prove that the deceased died a homicidal death much less a death by strangulation that too by the appellant. In this regard, he pointed out that there is serious controversy in regard to the time of death of the deceased. Though the prosecution has contended that she died on 8.2.1993 at about 10 a.m., the inquest panchnama which was held on 9.2.1993 about 24 hours later, noticed external injuries on the neck but found no decomposition or rigor mortis. While the post-mortem conducted by the doctor about 4 hours thereafter in specific terms has held that there was no external injury on the body including in the neck indicating that there was no pressure exerted externally and rigor mortis had already started as also the decomposition of the body. This observation of the doctor PW-8 is quite contrary to the inquest panchnama. The doctor had opined that the death of the deceased had occurred between 12 hours to 24 hours before the post-mortem examination. Therefore, it is contended there is a serious doubt as to the time of death. Learned counsel also pointed out that the doctor in specific terms had stated that the hyoid bone was not fractured indicating that there could not have been any external pressure so as to strangulate the deceased. This coupled with the emphatic opinion of the doctor that no opinion can be given as to the cause of death shows that the prosecution case that the deceased had died a homicidal death cannot be accepted. He also contended that the inordinate delay of nearly 12 hours in lodging the complaint at Police Station which is hardly 4 miles away from the place of incident without there being any reasonable cause throws a grave doubt as to the prosecution case more specially with regard to the presence of PWs. 1 and 5. Per contra, Shri G.Prabhakar learned counsel for the State contended that even from the evidence of doctor PW-8, it is reasonable to presume that the deceased had died a homicidal death because the doctor had admitted in his cross-examination that in all cases of strangulation there need not be any external injury, therefore, the absence of external injury would not indicate ipso facto that there was no strangulation. He also submitted that since the opinion of the doctor is not conclusive and in

the present case doctor having not specifically expressed any opinion against the death by strangulation, in view of the ocular evidence, the cause of death as propounded by the prosecution should be accepted. He also stated the presence of PWs. 1 and 5 as claimed by the prosecution was natural inasmuch as PW-1 was returning to his house from the field while PW-5 was in her house which is opposite to the house of incident. He further submitted that though there has been some delay in lodging the complaint, the same was explained by the prosecution which was because of the fact that PW-1 had to wait for his son who had to come from a distance of 60 kms. before he could take any further step. We have heard learned counsel and perused the judgment of the courts below as also the material on record. We are unable to agree with the findings of the courts below that the prosecution has proved beyond all reasonable doubt through the evidence adduced by it the fact that it is the appellant and the appellant alone who had committed this offence. We proceed on the basis that the relationship between the wife and the husband was not cordial and the deceased had come away from her marital home and staying with her father PW-1. But the prosecution case is that on the fateful day in the morning both PWs. 1 and 2 had gone to the field and it is only PW-1 who returned about 10 a.m. No explanation whatsoever has been given by the prosecution or PW-1 why at that point of time he returned back to the house. In the absence of any such explanation, we should conclude that the return was purely coincidental. It is the evidence of PW-1 as he came to the house he saw the appellant strangulating the deceased inside the house. From the evidence of PW-5 the neighbour, it becomes doubtful whether PW-1 could have seen this incident standing outside the house because PW-5 has stated that it is not possible to see the persons inside the house where the incident took place from outside the house. That apart, the evidence of PW-1 shows that he on a glance saw the appellant strangulating and then he shouted when the appellant left the deceased and ran away. This evidence of PW-1 is not in conformity with the medical evidence. That apart, when he shouted for help from PW-5 it is PW-5 who came near the deceased and adjusted her clothing and found the deceased had died. This shows that PW- 1 father of the deceased did not help the deceased, per contra, he stood there and it is only PW-5 who helped the deceased which is not a conduct of a father. The statement of PW-1 that the appellant ran away from the place of incident is not supported by any other evidence. It has come in the evidence that there are number of houses around the place of incident and none including PW-5 who came immediately after hearing the cries of PW-1 saw the appellant run away. Therefore, there is no evidence produced by the prosecution to show that anybody other than PW-1 saw the appellant either coming to the house or leaving the house or near about the house, for that matter anywhere near the village on the date of incident. PW-5's evidence does not directly support the prosecution case because admittedly she is not an eye-witness to the incident and what she saw was only the deceased lying either unconscious or dead and what she heard was what was told to her by PW-1, therefore, in regard to the actual incident her evidence is of no use to the prosecution. This apart, subsequent conduct of the PW-1 also throws some serious doubts as to his presence at the place of incident. The incident in question took place at 10 a.m. There are number of houses in the hamlet. In the village, there is a house of PW-7 who is the Village Administrative Officer but the PW-1 did not seek any assistance from him and chose not to lodge any complaint till about 11 p.m. in the night. The explanation given was that he wanted his son to come home before any further action could be taken. It is seen from the evidence of PW-4 the son himself that he came to the village

about 5 o'clock in the evening. The prosecution has not given any explanation why no complaint was lodged between 5 O'clock and 11 O'clock on that night. This is a very serious omission. More so in the background of the fact of the suggestions of the defence that the incident in question had taken place at a time when nobody could have noticed it and people must have noticed the incident only the next day, it is difficult to accept the evidence of PW-1 without there being any other evidence to support his case. Though the prosecution seeks corroboration from the evidence of PW-5 who only supports the case of PW-1 that on the fateful day at about 10 a.m. she was called by PW-1 and was told that the appellant has strangulated his daughter, this piece of evidence does not inspire much confidence in us mainly because of the circumstances narrated by us hereinabove which do not support the prosecution case. The learned Sessions Judge though found no support from the evidence of the doctor relied upon his cross-examination wherein he answered thus : "It is true that generally in all cases of throttling marks of violence and injuries cannot be found." From this the learned Judge drew an inference that in throttling case the external injury is not a necessity. We cannot accept the inference drawn by the High Court based on the stray statement of the doctor in his cross- examination. We should note that what is stated by the doctor in the cross-examination is not a conclusive opinion but it is only a possibility. In the case, in hand, there is no other material to show that the death in this case had occurred by throttling. More so in the background of the medical evidence, the expert evidence and chemical examiners opinion, therefore, this stray statement of the doctor could not have been relied upon by the learned Sessions Judge to come to the conclusion that the death is due to strangulation. We are also not in agreement with the High Court in regard to the acceptance of the evidence of PWs. 1 and 5 which, in our opinion, is doubtful and not safe to rely on. For the reasons stated above, this appeal succeeds and the same is allowed. The conviction and sentence imposed on the appellant by the courts below are set aside and the appellant is directed to be released forthwith, if not required in any other case.