SUPREME COURT OF INDIA

Vadlakonda Lenin

Vs.

State of Andhra Pradesh

C.A.No.126of2009

(Ranjan Gogoi and P. Sathasivam,JJ.)

22.11.2012

JUDGMENT

Ranjan Gogoi,J.

1. This appeal is directed against the judgment and order dated 29.9.2006 passed by the High Court of Andhra Pradesh affirming the conviction of the accused-appellant under Section 302 IPC and the sentence of life imprisonment imposed on him.

2. On 18.4.2003 at about 10.30 a.m. PW 1, Ponnam Pedda Sathaiah, the father of the deceased, filed a FIR in the Maripeda police station stating that he had given his daughter, Vadlakonda Radha, in marriage to the accused-appellant in the year 1999. At the time of marriage a sum of Rs.50,000 was claimed to have been given by the first informant as dowry, inspite of which, according to the first informant, the accused-appellant had been demanding more dowry and on that account committing atrocities on his daughter. In the FIR filed it was alleged that in the early morning of 18.4.2003 the accused-appellant had murdered his wife while she was sleeping and had run away. It was further alleged by the first informant that on coming to know of the incident he rushed to the appellants house and saw his daughter taking her last breath. Thereafter, he had brought her to the Area Hospital at Mahbubabad but on the way to the hospital she died at about 8.00 a.m.

3. On the basis of the aforesaid FIR, a case under section 302 and 304B of the IPC was registered. In the course of the investigation inquest was held on the dead body and the same was sent for post mortem examination. A large number of witnesses were examined and their statements were recorded under section 161 Cr.P.C. On 3.5.2003 the accused-appellant who was absconding was arrested from his house. On the same day at the instance of the accused-appellant PW 15, M. Laxminarayana, the Sub-Divisional Police Officer of

Mahabubabad recovered a tapper knife (M.O.6) and a blood stained shirt of the accused (M.O.7).

4. Charge sheet under section 302 and 498A IPC was submitted against the accused-appellant. However in the trial court, charge under section 302 alone was framed. The trial ended in the conviction of the accused- appellant who, as already noticed, was sentenced to undergo rigorous imprisonment for life. The aforesaid conviction and sentence having been affirmed by the High Court this appeal, by special leave, has been filed.

5. We have heard Mr. J.M. Sharma, learned counsel for the appellant and Mr. Mayur R. Shah, learned counsel for the respondent-State.

6. Of the 15 witnesses examined by the prosecution, the evidence tendered by PWs 1 and 2 (father and brother of the deceased); the evidence of PW 3, Ponnam Buchamma, who is a neighbour and who had seen the deceased lying on cot in her house with bleeding injuries from the neck and the accused running away from the place; the evidence of PW 10, who was a witness to the seizure of material objects No. 6 and 7 and PW 15, the Sub- Divisional Police Officer of Mahabubabad who had recovered material objects 6 and 7 on the basis of the statement made by the accused (Exh.P8) as well as the evidence of PW 12, Dr. Vaidehi, the Medical Officer who had performed the post mortem, would be relevant, and therefore, must be noticed in some details.

7. PWs 1 and 2 have deposed in the same vein. From the evidence of the said two witnesses, it transpires that the accused, though had received a sum of Rs.50,000 at the time of his marriage, had been persistently demanding more dowry and harassing and assaulting his wife i.e. the deceased from time to time. It also transpires from the evidence of PW 1 and 2 that in the evening before the occurrence there was a betrothal ceremony of the brother of the deceased, which was attended, amongst others, by PWs 1, 2 as well as the accused and the deceased. A plot of land measuring one and half acres and Rs.30,000 was offered as dowry to the brother of the deceased which had led to further renewed demands for additional dowry by the accused. Immediately after the ceremony a quarrel had taken place between the accused and the deceased as a result of which the deceased went to her co-sisters place (PW 5) to spend the night. In the early morning, she came to her own house and was lying in a cot when, according to PWs 1 and 2, the accused caused knife injuries on the neck of the deceased. According to the said witnesses though the deceased was taken to the hospital she died en-route.

8. PW 3 had deposed that in the early morning of the day of the occurrence while she was going to the stools side she noticed the deceased lying in the cot of her house with injuries on the neck from which she was bleeding. PW 3 had also deposed that she saw the accused

running away from the house. The co-sister of the deceased to whose house the deceased had gone after the quarrel with the accused was examined as PW 5. She, however, did not support the prosecution case. PW 3 had however admitted that in the early morning of 18.4.2003 as the deceased had not come out of her house she went to the house of the deceased and found her lying in the cot with injuries on the neck. PW 10, as already noticed, had deposed to the recovery of M.O. Nos.6 and 7 on the basis of the statement made by the accused (Ex.P.8) before PW 15, the Sub-Divisional Police Officer. PW 12 is the Doctor who had performed the post mortem on the deceased. He had deposed that he found incised wound involving the whole of the neck of the deceased and also cut wounds of the hyoid bone and the trachea. Corresponding to the said external injuries, PW 12 found the carotid vessels (the major vital blood vessels supplying blood to the brain) as well as the wind pipe of the deceased to have been cut. PW 15 is the Sub- Divisional Police Officer before whom the accused had made the statement (Exh.P8) leading to the recovery of material object No. 6 (knife) and material object No. 7 Vadlakonda Lenin vs State Of Andhra Pradesh on 22 November, 2012(blood stained shirt). PW 15 had also deposed that the whereabouts of the accused after the incident were not known and he could be arrested only on 3.5.2003.

9. Coupled with the above, from the examination of the accused under section 313 Cr.P.C., it transpires that the accused was not available after the incident. The absence of the accused has been sought to be explained by him by stating that he could come to know of the news of the death of his wife from the newspapers after which he had reported the incident to his sister.

10. A careful consideration of the evidence adduced by the prosecution would go to show that there is no direct evidence of any eye witness to the crime alleged against the accused. However, it transpires from the depositions of the prosecution witnesses that certain circumstances inimical to the accused have been proved by the prosecution in the present case. Such circumstances which have been culled out by the learned trial court and also by the High Court can be summarised as below:

> "i) The accused had been making demands for dowry and on that account was harassing, intimidating and committing atrocities on the deceased;
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> ii) The accused and the deceased alognwith PWs 1 and 2 had attended the betrothal function of the brother of the deceased in the evening prior to the incident. Immediately after the incident, there was a quarrel between the accused and the deceased;

iii) In the early morning of the next day the deceased was found by PW 3, lying in a cot in her own house with injuries on her neck;

iv) The accused was found by PW 3 to be running away from the place.

v) The whereabouts of the accused was not known after the incident and he could be arrested only on 3.5.2003; and

vi) the accused had stated in his examination under section 313 Cr.P.C. that he came to know of the incident only from the newspapers, whereafter he had explained the whole incident to his sister."

11. The culpability of the accused-appellant, in the absence of any direct evidence, has to be judged on the basis of the circumstances enumerated above. The principles of law governing proof of a criminal charge by circumstantial evidence would hardly require any reiteration save and except that the circumstances on which the prosecution relies must be proved beyond all reasonable doubt and such circumstances must be capable of giving rise to an inference which is inconsistent with any other hypothesis except the guilt of the accused. It is only in such an event that the conviction of the accused, on the basis of the circumstantial evidence brought by the prosecution, would be permissible in law. In this regard a reference to the five golden principles enunciated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 may be recapitulated for which purpose para 153 of the judgment in the above case may be usefully extracted below:

"Vadlakonda Lenin vs State Of Andhra Pradesh on 22 November, 2012153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra : (1973) 2 SCC 793 where the following observations were made: certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4)They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

12.Learned counsel for the appellant has vehemently argued that in the present case the prosecution has failed to prove the most vital circumstance of the case, namely, motive of the accused for committing the alleged crime. Infact, according to the learned counsel, no charge against the accused having been framed under section 498A IPC inspite of specific allegations of demand of dowry and harassment etc. of the deceased by the accused the motive for commission of the alleged offence remain unsubstantiated. Learned counsel has also pointed out that the prosecution case to the effect that the deceased had left her house in the evening prior to the incident and has spent the night in the house of co-sister, PW 5, has not been established. It is also urged that, in any case, if the deceased had spent night in the house of the co-sister, as claimed by the prosecution, no explanation has been forthcoming as to how she could be seen by PW 3 lying injured in the cot in her own house in the morning. Learned counsel has further submitted that PW 3 has contradicted herself on a vital part of the prosecution story, namely, the point of time when she had seen the deceased lying in the cot and the accused fleeing away from the place. While at one place PW 3 had claimed to have seen the above sequence of events while going to the stools side, in her cross-examination she had stated that she saw the same while returning.

13. In reply, the learned State Counsel has contended that prosecution case cannot fail merely on account of the absence of proof of any motive on the part of the accused to commit the crime. Learned counsel has submitted that the evidence of PWs 1 and 2 amply demonstrates that demand for dowry was made by the accused from time to time and also the ill-treatment meted out by the accused to the deceased. The incident had taken place in the house of the accused to which the deceased had returned in the early morning. It is pointed out that PW 3, who had seen the accused fleeing away from the place of occurrence, is related to both the sides and, therefore, is eminently reliable. The absence of accused for a period of nearly 15 days after the incident and the recoveries made on the basis of the statement of the accused has been pointed out by the learned counsel as sufficient proof of the involvement of the accused in the crime alleged against him. The contradictions in the evidence of PW 3,

according to the learned counsel, are minor and insignificant. Learned counsel has also pointed out that though PW 5 was declared hostile, she had, infact, supported the prosecution case to the extent that in the early morning of the day of the incident, as the deceased had not come out from her house, PW 5 had gone to the house of the deceased and found her lying on the cot with injuries on the neck.

14.We have considered the submissions advanced on behalf of the parties and the entire evidence on record. Upon such consideration we find that from the evidence of PWs 1 and 2 it is crystal clear that the accused had been persistently demanding additional dowry from the deceased and had been ill-treating her. From the evidence tendered by the said two witnesses it is also clear that immediately before the incident there was a quarrel between the accused and the deceased. In the early morning of 18.4.2003 the deceased was found lying injured in the cot in her own house by PW 3 as well as by PW 5. Nobody except the accused was in the house immediately before the occurrence. The accused was seen fleeing away from the house by PW 3. Thereafter, the whereabouts of the accused were not known until he was arrested on 3.5.2003. After his arrest, the accused had made a statement (Exh. P.8) on the basis of which a knife and a blood stained shirt of the accused (M.Os. 6 and 7) were recovered. The explanation offered by the accused for his absence for a period of nearly 15 days following the death of his wife is unnatural and opposed to all cannons of acceptable human conduct and behaviour. The aforesaid circumstances which have been proved and established by prosecution, in our considered view, squarely satisfies the test laid down by this Court in Sharad Birdhichand Sarda (supra). The principles laid down in the aforesaid decision have been consistently reiterated by this court and exhaustively considered in a very recent decision in Sathya Narayanan v. State Rep. by Inspector of Police (decided on November 2, 2012). (Reported in J.T. 2012 (11) SC 57).

15. Having considered the totality of the facts of the present case and the principles of law as above, we are left with no doubt whatsoever that in the present case the prosecution has established beyond all reasonable doubt that it is the accused alone and nobody who had committed the offence. Accordingly, we are of the view that the conviction of the accused and the sentence imposed on him by the learned trial court as affirmed by the High Court will not justify any interference. We, therefore, dismiss the appeal and affirm the conviction of the accused under section 302 IPC and the sentence of life imprisonment imposed on him.