

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2038 of 2011

Ravirala Laxmaiah

...Appellant

Versus

State of A.P.

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 13.7.2010, passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 302 of 2007, concurring with the judgment and order dated 5.2.2007 of the Ist Additional Sessions Judge, Mahabubnagar, Andhra Pradesh, in Sessions Case No. 83 of 2006, whereby and whereunder the appellant was found guilty of the offences punishable under Sections 302 and 404 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'), and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.100/-, in default of payment of which, simple imprisonment for a period of three months under Section 302 IPC; and for the offence punishable under Section 404 IPC, rigorous imprisonment for a period of three years, was imposed on him. However, both the sentences were directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are that:

A. Balamani (deceased) was the second wife of the appellant. Their marriage was solemnized in 2002, for which her father had given dowry of Rs.20,000/-, gold earrings, a ring and silver anklets etc. Appellant became suspicious of the fidelity of his wife, and began to beat her up at times. The deceased went to live in the house of her parents because of the ill-treatment meted out to her by the appellant. However, upon the advice of the elders in her family, she decided to go back to the appellant. The appellant and the deceased were taken by G. Balaiah (PW.3), the paternal uncle of deceased to Hyderabad, and there he was engaged in coolie work. Here too, the appellant and Balamani (deceased) would often quarrel, and the appellant would beat her. They eventually returned to their village, and 15 days prior to the said incident, the appellant had taken Balamani (deceased) to Srisailam and here they had worked at Eagalapenta, attending to the petty works in and around the colony for some time. D.V. Subbaiah (PW.2), a neighbour, had seen the appellant and the deceased quarrelling, and as a result thereof, had also noticed Balamani (deceased) weeping.

B. On 12.7.2003, Dasu Krishnaiah (PW.1), father of the deceased, received a telephone call from the appellant, wherein he was informed that Balamani was suffering from a severe stomach ache. The next day, the appellant again made a call to the neighbours of Dasu Krishnaiah (PW.1) and asked them to give a message to Dasu Krishnaiah (PW.1), asking him to come to Eagalapenta. However, Dasu Krishnaiah (PW.1) was unable to reach there. The next day, at about 10.30 A.M., the appellant telephonically informed Dasu Krishnaiah (PW.1) that Balamani had committed suicide. Dasu Krishnaiah (PW.1) immediately rushed by jeep, alongwith his family. On the way, they met the appellant at Santa Bazar at Achampet. The appellant then informed them that Balamani had committed suicide by hanging herself in the 'G' Type Labour Quarters, Near the Krishna Guest House, Eagalapenta. Even on being requested by Dasu Krishnaiah (PW.1), the appellant refused to accompany them and instead, escaped from there. The family of Balamani (deceased) had thereafter reached the 'G' type quarters, and here they found that the dead body of Balamani (deceased) was smelling, and that from it, blood was flowing out of the house over its threshold. The dead body of the deceased was lying on the floor, and two granite stones lay near the head of the dead body. There were tears on certain parts of the body of deceased, which clearly indicated that there had been attempts made to forcibly snatch off her gold ornaments.

C. Dasu Krishnaiah (PW.1) filed an FIR regarding the incident on 15.7.2003, alleging that the appellant had killed Balamani on the night of 12.7.2003, by strangulation. Her nose and ears were viciously cut, and all her gold ornaments and anklets had been stolen.

D. The police had recovered the dead body of Balamani, and had got the autopsy performed upon it. The appellant had been absconding, and thus could be arrested only on 15.7.2003. On the basis of the disclosure statement that was made by the appellant, the ornaments of Balamani, deceased, had been recovered in the presence of two panch witnesses, namely, Ganjai Niranjan (PW.8) and Syed Aktharali (PW.9). After completion of the investigation, a chargesheet was filed on 28.10.2005. Charges were framed on 17.8.2006 against the appellant, for the offences punishable under Sections 302 and 404 IPC.

E. After the conclusion of the trial, the learned Additional Sessions Judge convicted and sentenced the appellant vide impugned judgment and order dated 5.2.2007, as has been referred to hereinabove.

F. Aggrieved, the appellant preferred an appeal before the High Court, which was dismissed vide impugned judgment and order dated 13.7.2010.

Hence, this appeal.

3. Dr. Aman Hingorani, learned counsel appearing for the appellant has submitted, that the present case was one of suicide by hanging, and that the same most certainly did not involve homicide by strangulation, as it is evident from the post-mortem report, as well as from the deposition of Dr. K. Padmavathi (PW.10), both of which clearly suggest, that death had been caused as a result of suicide by hanging. Even otherwise, there exist serious discrepancies and inconsistencies in the depositions of the witnesses. There was no motive whatsoever, for the appellant to commit the murder of his wife. All the recoveries are fake, and the material objects, particularly jewellery and other items have been planted by the police to falsely implicate the appellant in the case, as recovery witnesses of the

jewellery, particularly Ganjai Niranjan (PW.8) and Syed Aktharali (PW.9), do not support the recovery of the aforementioned items. The mere appearance and admission of their signature/thumb impression on the memo of recovery, does not prove the recovery. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Gagandeep Sharma, learned counsel appearing for the respondent, has opposed the appeal, contending that opinion of Dr. Padmavathi (PW.10) could not be a piece of conclusive evidence. It is not necessary that the medical report, as well as the deposition of Dr. K. Padmavathi (PW.10) suggest the theory of suicide by hanging, and not of homicidal death by strangulation. The inconsistencies in the depositions of the witnesses are minor, and the same natural, as the evidence of the said witnesses was recorded after the lapse of a long period from the date of incident. The appellant had doubted the fidelity of his wife, and had therefore nursed a grudge when she had gone alongwith her paternal uncle G. Balaiah (PW.3) alone. However, she had been taken by G. Balaiah (PW.3) alongwith her sister. The concurrent findings of fact recorded by the courts below do not warrant any interference. The appeal lacks merit and is thus, liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties, and perused the record.

6. The Trial Court has appreciated the evidence of all the witnesses, including medical evidence.

So far as the recoveries are concerned, undoubtedly, Ganjai Niranjan (PW.8) and Syed Aktharali (PW.9), do not support the recoveries of the ornaments. However, they have admitted to their signature/thumb impression(s) being present on the recovery memos.

7. D.V. Subbaiah (PW.2) is a circumstantial witness, and has deposed that being a neighbour of the couple referred to herein, he was fully aware of the fact that the appellant had in fact ill-treated his wife, and that there quarrels often arose between them. The deceased Balamani would cry a lot.

8. G. Balaiah (PW.3), the paternal uncle of deceased has deposed that he had taken the deceased and her sister alongwith him from Hyderabad, and the same had become an issue with respect to which the appellant would quarrel bitterly with the deceased Balamani, as he doubted her character and he presumed that G. Balaiah (PW.3) had taken her alone from Hyderabad. Thus, it is indirectly suggested that owing to the suspicious mind of the appellant, he had believed that there had existed a questionable relationship between the deceased and G. Balaiah (PW.3).

9. The Trial Court, after considering the entire evidence on record has recorded the following findings:

(i) The conduct of the appellant towards his wife was not cordial, and there existed adequate material on record to prove that the accused had in fact been beating and harassing his wife intentionally.

(ii) The evidence on record conclusively proves that the appellant had a deep rooted motive to somehow eliminate his wife, and the reason for this was the suspicion he had with respect to her character, particularly after she had travelled with G. Balaiah (PW.3) alone (in his opinion), from Hyderabad to Bommanapally.

(iii) The recovery witnesses Ganjai Niranjan (PW.8) and Syed Aktharali (PW.9) particularly as regards the recovery of the jewellery of the deceased, do not support the case of the prosecution, but they have admitted to their signature/thumb impression(s) appearing on the

panchnama Ext.P-4.

(iv) Indisputably, the panchnama Ext.P-4 is in relation to material objects 1 to 3, i.e. in relation to the ornaments belonging to the deceased Balamani.

(v) The appellant has not offered any explanation as regards the gold ornaments of his wife being in his possession. He had been fully aware of the death of his wife from the very beginning.

(vi) The appellant had been in the company of his wife at the time of her death, and had been last seen with her. It is not the case of the appellant that any other person could have come and committed the crime.

(vii) The evidence on record fully excludes the theory of suicide, and establishes the cause of death as homicidal.

(viii) The appellant had been giving misleading information to Dasu Krishnaiah (PW.1), the father of the deceased.

(ix) The appellant had stayed in a guest house, leaving the dead body of his deceased wife lying in the house, and had subsequently, after meeting the family members of the deceased, absconded, and could only be apprehended after several days.

(x) Any inconsistencies, embellishments or discrepancies in the evidence are minor, and do not go to the root of the case.

10. The High Court has re-appreciated the entire evidence on record, and has concurred with the conclusions arrived at by the Trial Court, observing as under:

That the appellant had been with the deceased at the time of her death. He had furnished false information to the family members of the deceased, and the recovery of the jewellery of the deceased from the house of the accused had been made at his behest. The defence put forward by the appellant stating that the deceased had committed suicide by hanging herself at their residence, was not acceptable. The tears present on the body of the deceased indicated the forcible snatching of her ornaments.

11. So far as the medical evidence is concerned, the High Court has dealt with the opinion of Dr. K. Padmavathi (PW.10), who has referred to Modi's Medical Jurisprudence and Toxicology, wherein it has been stated that, "hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation", although the larynx and the trachea may, in rare cases, be fractured as a result of a fall. The postmortem has revealed that the fracture of the hyoid bone is characterised by the absence of hemorrhage in the tissues around the fracture.

Furthermore, the High Court has dealt with the factual matrix of the case and has relied upon the statement of Dasu Krishnaiah (PW.1), who has deposed that the sari of the deceased had been thrown into a corner of the room, and that it had not been cut into two pieces as was suggested by the appellant accused. The appellant has suggested that he had cut the sari with a knife, and had let the dead body of his wife onto the floor. As an observation of the scene of the offence does not indicate that the remaining piece of sari had been found on the ceiling, and the prosecution has established the other facts regarding them last being seen and living together. The case against the appellant stands fully proved, and the theory that the deceased had committed suicide by hanging herself, is a false plea taken by the appellant, which in itself is an additional link connecting the appellant to the commission of offence.

12. So far as the medical evidence is concerned, the issue involved herein is no more res integra.

This Court dealt with the issue in Ponnusamy v. State of Tamil Nadu, AIR 2008 SC 2110, and observed as under:

"20-21. It is true that the autopsy surgeon, PW 17, did not find any fracture on the hyoid bone. Existence of such a fracture leads to a conclusive proof of strangulation but absence thereof does not prove contra. In Taylor's Principles and Practice of

Medical Jurisprudence, 13th Edn., pp. 307-08, it is stated:

'The hyoid bone is 'U' shaped and composed of five parts: the body, two greater and two lesser horns. It is relatively protected, lying at the root of the tongue where the body is difficult to feel. The greater horn, which can be felt more easily, lies behind the front part of the strip muscles (sternomastoid), 3 cm below the angle of the lower jaw and 1.5 cm from the midline. The bone ossifies from six centres, a pair for the body and one for each horn. The greater horns are, in early life, connected to the body by cartilage but after middle life they are usually united by bone. The lesser horns are situated close to the junction of the greater horns in the body. They are connected to the body of the bone by fibrous tissue and occasionally to the greater horns by synovial joints which usually persist throughout life but occasionally become ankylosed.

Our own findings suggest that although the hardening of the bone is related to age there can be considerable variation and elderly people sometimes show only slight ossification.

From the above consideration of the anatomy it will be appreciated that while injuries to the body are unlikely, a grip high up on the neck may readily produce fractures of the greater horns. Sometimes it would appear that the local pressure from the thumb causes a fracture on one side only. While the amount of force in manual strangulation would often appear to be greatly in excess of that required to cause death, the application of such force, as evidenced by extensive external and soft tissue injuries, make it unusual to find fractures of the hyoid bone in a person under the age of 40 years.

As stated, even in older people in which ossification is incomplete, considerable violence may leave this bone intact. This view is confirmed by Green. He gives interesting figures: in 34 cases of manual strangulation the hyoid was fractured in 12 (35%) as compared with the classic paper of Gonzales who reported four fractures in 24 cases. The figures in strangulation by ligature show that the percentage of hyoid fractures was 13. Our own figures are similar to those of Green.'

22. In Journal of Forensic Sciences, Vol. 41 under the title - Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

'The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 ± 14 years) when compared to the victims with unfractured hyoids (30 ± 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 ± 12 years) whereas the unfused hyoids were found in the younger victims (28 ± 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data

indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones.'

23. Mr Rangaramanujam, however, relied upon Modi's Medical Jurisprudence and Toxicology, 23rd Edn. at p. 584 wherein a difference between hanging and strangulation has been stated. Our attention in this connection has been drawn to Point 12 which reads as under:

Hanging	Strangulation
Fracture of the larynx and trachea-	Fracture of the larynx and trachea -
Very rare and that too in judicial hanging	Often found also hyoid bone.

24. A bare perusal of the opinion of the learned author by itself does not lead to the conclusion that fracture of hyoid bone, is a must in all the cases."

13. Dr. Aman Hingorani has submitted that in the present case, the post mortem report is completely silent about the ligature mark and its characteristics, as a result of which it cannot be said that the present case was one of homicidal strangulation/throttling as alleged by the prosecution. Dr. Hingorani has placed a very heavy reliance on Modi's Medical Jurisprudence and Toxicology wherein after emphasizing that "hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation", has given the differences between hanging and strangulation in tabulated form, two of them being as follows:

Hanging	Strangulation
Ligature Mark - Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove of furrow being hard, yellow and parchment like	Ligature Mark - Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish
Scratches, abrasions and bruises on the face, neck and other parts of the body -	Scratches, abrasions and bruises on the face, neck and other parts of the body -
Usually not present	Usually not present

14. However, in view of the binding decision referred to hereinabove, we concur with the reasoning that has been given by the Trial Court, as well as by the High Court and are not in a position to accept the submissions made by Dr. Aman Hingorani.

15. It is a settled legal proposition that in a case based on circumstantial evidence, where no eye-witness's account is available, the principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation for the same, or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. (Vide: State of U.P. v. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045; Gulab Chand v. State of M.P., AIR 1995 SC 1598; State of Tamil Nadu v. Rajendran, AIR 1999 SC 3535; State of Maharashtra v. Suresh, (2000) 1 SCC 471; and Ganesh Lal v. State of Rajasthan, (2002) 1 SCC 731).

16. In Neel Kumar @ Anil Kumar v. State of Haryana, (2012) 5 SCC 766, this Court observed :

"30. It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 CrPC. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material at his disclosure statement duly proved is a very positive circumstance against him. (See also: Aftab Ahmad Anasari v. State of Uttaranchal, AIR 2010 SC 773)"

17. In cases where the accused has been seen with the deceased victim (last seen theory), it becomes the duty of the accused to explain the circumstances under which the death of the victim has occurred. (Vide: Nika Ram v. The State of Himachal Pradesh, AIR 1972 SC 2077; Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106; and Ponnusamy (supra).

18. In Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681, this Court held as under:

"Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

(See also: Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10)

19. In view of the above discussion, we reach the inescapable conclusion that appellant had been doubting the character of his wife and therefore, had adequate motive to eliminate her. In spite of the fact that he had been in the same room, he failed to furnish any explanation as under what circumstances his wife was found dead. Particularly, in view of the fact that the courts below had excluded the theory of suicide. The same conclusion stands fully fortified by the fact that the saree of deceased was lying in the corner of the room and the version given by the appellant that he had found his wife hanging with a saree around her neck and he cut the same by knife stands fully falsified as in such a fact-situation, part of the saree should have been found hanging with the ceiling of the room. The conduct of the appellant that he had given a false information to his in-laws and while dead body was lying in his house he stayed in a Krishna Guest House; further that he had absconded from the city itself, suggest that he is guilty of the offence.

20. In view of the above, we do not find any cogent reason to interfere with the judgments and orders of the courts below. The appeal lacks merit, and is accordingly dismissed.

.....J.
[DR. B.S. CHAUHAN]

..... J.
[DIPAK MISRA]

NEW DELHI;
MAY 28, 2013

ITEM NO.1C
(For Judgment)

Court No.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 2038 OF 2011

RAVIRALA LAXMAIAH

Appellant (s)

VERSUS

STATE OF A.P.

Respondent(s)

Date: 28/05/2013 This Appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Aman Mohit Hingorani,Adv.

For Respondent(s) Mr. D. Mahesh Babu,Adv.

Hon'ble Dr. Justice B.S. Chauhan pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Dipak Misra.

The appeal is dismissed in terms of the signed judgment.

| (NARENDRA PRASAD) | (M.S. NEGI) |
| Court Master | Court Master |

(Signed "Reportable" judgment is placed on the file)