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VANGA SRINIWAS

v.

PUBLIC PROSECUTOR, HIGH COURT OF A.P.

SEPTEMBER 14, 2007

B

[C.K. THAKKER AND P. SATHASIVAM, JJ.]

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*Penal Code, 1860—ss. 304B and 201—Strangulation of wife by husband—Alteration of charges from s. 302 to ss. 304B and 201—Acquittal by trial court—High Court convicting accused under s. 302 and imposing life imprisonment—Held: Not justified—Evidence of panchas, medical evidence and the fact that accused was alone in the company of deceased, it is clear that deceased died due to strangulation—Based on materials collected with regard to dowry demand, suspicion, harassment and torture by accused and medical evidence as to the cause of death, investigating agency altered the*

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*offence from s. 302 to 304B and 201—High Court did not take note of the same—In view of altered charges, accused convicted under s. 304B and sentenced to 7 years rigorous imprisonment.*

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According to the prosecution case, appellant murdered his wife-VV by strangulation and hanged the dead body to the ceiling fan with the intention to screen the offence. One year prior to the incident appellant was married to VV. Parents of the deceased-PW-1 and PW-2 stated that the accused tortured and harassed the deceased for dowry. The residents of the village also deposed that appellant and VV used to quarrel regarding dowry. Father of the deceased-PW 1 lodged FIR. Investigation was carried out. Doctor conducted post-mortem and opined that he could not decide preliminarily that death was suicidal or homicidal. Charge sheet was filed. Thereafter, investigating agency based on the materials with regard to demand of dowry, suspicion, harassment and torture by the accused and the medical evidence as to the cause of death altered the charges from section 302 to section 304B and section 201. Sessions Judge relying on the finding of the doctor and that the prosecution failed to establish

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its case, acquitted the appellant-accused for the offence under sections 302, 201 or 304B IPC. High Court finding that the prosecution has established the guilt of the accused beyond reasonable doubt, convicted the accused for offence under section 302 and imposed life imprisonment. Hence the present

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appeal.

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During pendency of appeal, appellant filed application for permission to file additional documents-Annexure A1-copy of alteration of section of law from s. 302 to s. 304B and s. 201 IPC filed by the Police Inspector before trial court and Annexure A2-copy of charge sheet filed by Sub Divisional Police Officer. A

Partly allowing the appeal, the Court B

HELD: 1. The conviction and sentence imposed by the High Court is modified and the appellant/accused is convicted under section 304 B IPC and a sentence of seven years rigorous imprisonment is imposed to meet the ends of justice. [Para 16] [1037-F, G] C

2.1. The statement of prosecution witnesses 3, 4 and 6 cannot be lightly ignored when admittedly all of them are residents of the same village particularly residing in and around the house of accused. Though no specific reference was made to dowry demand in the complaint, if the entire evidence of PWs 1, 2, 3, 4 and 6 coupled with other circumstances is considered the accused harassed the deceased and threatened her on many occasions for not fulfilling his demand of dowry. No doubt, he not only threatened her but also doubted her fidelity and was not able to bear with her when she interacted with others. It is not in dispute that at the time of occurrence, the deceased and the accused alone were inside the house. If it is a mere case of suicide, on seeing the same he could have raised an alarm or even prevented her, instead he ran away from the scene of occurrence. [Para 11] [1034-D, E, F] D E

2.2. Both PWs 8 and 9-attestors of inquest report expressed that the deceased had not committed suicide but she was throttled and was hanged to the fan. They also observed that the feet of the dead body was touching the cot beneath and the saree noose was loose. It is also seen that during the inquest, the panchas also opined that the accused used to suspect the fidelity of the deceased and he used to beat her. PW 11 - Mandal Revenue Officer deposed that the inquest was held in his presence and found marks around the neck and ear. [Para 12] [1034-G, H; 1035-A, B] F G

2.3. Doctor who conducted post-mortem on the body of the deceased in his preliminary report has not offered his opinion as to the cause of death but in the final opinion, he has specifically stated that the cause of death is "Asphyxixi due to throttling". The analysis of post-mortem report coupled with the evidence of doctor clearly showed presence of nail marks, contusion over the neck, ligature marks around the neck, fracture of hyoid bone corn H

A and and fracture of 9 ribs right and left sides. Though there was a suspicion that the deceased might have been poisoned on account of the presence of some powder in the glass and a tablet that were present at the scene of occurrence, in view of FSL report, there is no proof to the effect that the death was due to poison. [Para 13] [1036-B, C, D]

B 2.4. On consideration of all material circumstances, particularly the undisputed fact that at or about the time of deceased's death, no third person except the accused and the deceased, were present in the house; evidence of panchas-PWs 8 and 9, PW 11-Revenue Officer, coupled with the medical evidence as well as final report, it will inescapably lead to the conclusion that within all human probability, it was the accused and none else, who had murdered the deceased by strangulating her to death.

[Paras 12, 13 and 14] [1036-D, E]

D 2.5. The prosecution rightly pointed out that, it was not the case of the accused that any other person was residing with them in the same house particularly on the fateful day. Further, there was no explanation from the accused as to when he left the house and came to know about the hanging of the dead body and it would be right in arriving at a conclusion that he alone was responsible for the commission of the offence. As observed by High Court, the trial Court acquitted the accused only on the simple ground that the doctor, who conducted post-mortem examination, did not offer cause of death in his preliminary report, forgetting that in the final report particularly after receipt of FSL report, the very same doctor has opined that the death was due to "Asphyxi due to throttling". In the light of the materials available, the conclusion of the trial Judge cannot be accepted and the High Court taking into consideration the totality of the circumstances and the entire materials was right in accepting the case of the prosecution and found the accused guilty.

[Para 14] [1036-F, G; 1037-A, B]

G 2.6. Additional documents-Annexures A1 and A2 clearly show that based on the materials collected the investigating agency altered the offence from Sections 302 IPC to 304B and 201 IPC. The altered charge has not been taken note of by the High Court while arriving at a conclusion against the accused. In view of the relevant materials with regard to demand of dowry, suspicion, harassment and torture by the accused and the medical evidence as to the cause of death and in the light of the altered charge memo as one of Section 304B instead of 302 IPC, it is but proper to convict the accused only under H Section 304B IPC and not under Section 302 IPC as ordered by the High Court. [Para 15] [1037-C, D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 243 of 2007. A

From the Judgment and Order dated 11.10.2006 of the High Court of Andhra Pradesh at Hyderabad in Crl. Appeal No. 2339 of 2004.

I. Venkatnarayana, T.N. Rao, Manjeet Kirpal and Paramjeet Singh for the Appellant. B

Debojit Borkakati and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J. 1.** This appeal has been preferred by the appellant being aggrieved by the judgment of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 2339 of 2004 dated 11.10.2006 reversing the order of the acquittal passed by the II Addl. District and Sessions Judge (FTC), Nizamabad in Sessions Case No.314 of 1998 convicting and sentencing him to undergo life imprisonment. D

2. The case of the prosecution is briefly stated hereunder:-

The appellant herein was the sole accused in Sessions Case No. 314 of 1998 on the file of II Addl. District and Sessions Judge (FTC), Nizamabad. On 24.01.1997, at about 11.00 a.m., the accused caused the death of his wife - Vanga Vimala by throttling her neck and in order to screen the said offence, hanged her dead body to the ceiling fan. The further charge was that the accused was harassing the deceased for dowry. The father of the deceased was examined as PW 1 and PW 2 is wife of PW 1. The deceased was given in marriage to the accused one year prior to the date of incident. The accused and the prosecution witnesses are residents of Gajulapet village. PWs 3 to 6 who are all residents of the same village deposed about the quarrel between the deceased and the accused regarding dowry and other matters. The offence took place on 24.01.1997 at about 11.00 a.m. After coming to know the incident, PW 1 rushed to the house of the accused and found the deceased - her daughter hanging to the ceiling fan with a new saree. He made a complaint to the police (Ex. P-1) based on which a crime was registered. Based on the complaint of PW 1, the police took up investigation, noted the scene of offence, conducted inquest over the dead body of the deceased, sent the dead body for post-mortem examination, examined the witnesses and recorded H

A their statements. The accused was arrested on 03.02.1997 and after receipt of the final opinion from the doctor, who conducted post-mortem examination and after completion of the investigation, the police laid the charge sheet.

B 3. The prosecution, in order to prove the guilt of the accused, examined as many as PWs 1 to 14 and marked Ex. P1 to P14. No oral or documentary evidence was adduced on the defence side. The learned Sessions Judge, by judgment dated 25.04.2003 after finding that the doctor who conducted post-mortem cannot decide preliminarily that the death was suicidal or homicidal and the prosecution failed to establish that the accused himself is connected with the death of the deceased, acquitted the accused under Section 235(1) C Cr.P.C. for the offence under Sections 302, 201 or 304B IPC.

D 4. Questioning the correctness of the acquittal of the trial Court, the State through its Public Prosecutor filed Criminal Appeal No. 2339 of 2004 before the Andhra Pradesh High Court. The Division Bench, by the impugned order dated 11.10.2006, after accepting the case of the prosecution and considering the entire circumstances and finding that the prosecution has established the guilt for offence under Section 302 beyond reasonable doubt sentenced the accused to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for 6 months. Challenging the said order of the Division Bench, the accused has preferred the present E appeal before this Court.

5. We heard Mr. I. Venkatnarayana, learned senior counsel for the appellant and Mr. Debojit Borkakati, learned counsel for the respondent.

F 6. The only point for consideration in this appeal is whether the prosecution proved the guilt of the accused beyond reasonable doubt and the High Court is justified in convicting and sentencing the accused for the offence under Section 302 I.P.C.

G 7. Before analyzing the case of the prosecution, it is relevant to mention that during the pendency of this appeal, the appellant/accused filed I.A. No. 8289 of 2007 praying for permission to file additional documents, namely, Annexure-A1 copy of alteration of Section of law filed by the Inspector of Police before the trial Court on 25.01.1997 and Annexure-A2 copy of the charge sheet filed by the Sub Divisional Police Officer, Nizamabad.

H 8. It is seen from the documents - Annexures A1 and A2, the investigating

agency, based on the materials, arrived at a conclusion that the accused Vanga Srinivas suspected the character of the deceased and also tortured her for dowry and when she failed to get the same, the accused murdered her by strangulation and hanged the dead body to the ceiling fan with an intention to screen the offence and, therefore, the offence under Section 304B and Section 201 IPC has been established against the accused. In view of the above facts and circumstances, the Section of law has been altered from 302 IPC to 304B and 201 IPC.

9. It is not in dispute that the prosecution has not examined eye-witness to the occurrence. In other words, there is no direct witness who, in fact, saw the alleged offence. The prosecution case rests mainly on the circumstantial evidence and let us consider whether the prosecution placed acceptable materials to substantiate the charges leveled against the accused. It is pertinent to mention that even after the alteration of charge, both the trial Court as well as the High Court proceeded with a case as if the charge relates to Section 302 IPC. As said earlier, the trial Judge mainly based on the post-mortem report of the doctor acquitted the accused whereas the High Court accepted the case of prosecution in toto and found guilty accused under Section 302 IPC and imposed life imprisonment. With this background, let us analyze the case of the prosecution and the defence of the accused.

10. The appellant/accused after marriage with the deceased Vanga Vimala were staying in rented accommodation in H.No.9-8-734 in Gajulapet. The deceased used to attend the household work of other houses. PW 1, who is the father of the deceased, in his evidence deposed that after marriage the accused now and then bring his daughter to his home. The accused was not bearing his wife going to market and often questioned her while she was speaking with others. He used to beat her by locking the house. He was demanding dowry and her daughter used to tell all these whenever the accused brought her to his home. He was harassing her for money and once gave her poison by mixing it into water, made her to drink and when she refused; he pressed her throat and made her to consume it. At the time of the incident, PW 1 was at factory and on receipt of information, he went to the house of the accused and found her daughter hanging to a fan with a new saree. It was he who made a complaint to the police. The complaint is Ex. P-1. PW 2 - wife of PW 1 and mother of the deceased also reiterated the same.

11. Mr. I. Venkatnarayana, learned senior counsel, by drawing our

A attention to Ex. P-1 (complaint to the police), submitted that in the absence of any reference to dowry demand/harassment, the statement of PW 1 as well as PW 2 before the Court regarding demand of dowry by the accused is an afterthought and hence the same was rightly not accepted by the learned trial Judge and the High Court committed an error in convicting the accused. It is true that though there is no reference in the complaint about the dowry demand, however, PWs 1 & 2 who are none else than the parents of the deceased, in their evidence stated about torture and dowry harassment by the accused. In this regard, it is relevant to refer to the evidence of other witnesses, namely, PWs 3, 4 and 6. PW 3 is a resident of Boigally, which is nearby to the vegetable market, Gajulapet. According to her, on the date of incident, while she was going to the market she saw the accused and his wife quarrelling with regard to dowry amount. She also heard the quarrels between the accused and his wife and asserted that Vimala died for not bringing dowry. PW 4, resident of Gajulapet, also reiterated and asserted that there were quarrels between the accused and his wife over demand for dowry. Though PW 5, another resident of the same village turned hostile, PW 6, who is also a resident of Gajulapet, deposed before the Court that he observed on many occasions the accused and his wife quarelling and the accused demanding her to bring more dowry. The statement of these witnesses i.e. PWs 3, 4 and 6 cannot be lightly ignored when admittedly all of them are residents of the same village particularly residing in and around the house of the accused. As said earlier, though no specific reference was made to dowry demand in the complaint, if we consider the entire evidence of PWs 1, 2, 3, 4 and 6 coupled with other circumstances, we are of the view that the accused harassed the deceased and threatened her on many occasions for not fulfilling his demand of dowry. No doubt, he not only threatened her but also doubted her fidelity and was not able to bear with her when she interacts with others. It is not in dispute that at the time of occurrence, the deceased and the accused alone were inside the house. If it is a mere case of suicide, as rightly pointed out by the prosecution, on seeing the same he could have raised an alarm or even prevented her, instead he ran away from the scene of occurrence.

G 12. It is useful to refer to the evidence of PW 8 and PW 9 who are attesters of inquest report. PW 8 also a resident of Gajulapet, Nizamabad in her evidence has stated that she along with PW 9 found Vanga Vimala hanging to the ceiling fan and it appeared the neck of the deceased Vimala was tied with a saree. Both PWs 8 and 9 expressed that the deceased had not committed suicide but she was throttled and was hanged to the fan. They

also observed that the feet of the dead body was touching the cot beneath and the saree noose is loose. The above statement of PW 8 and PW 9 is available in Ex. P-8 which is inquest panchnama. It is also seen that during the inquest, the above said panchas also opined that the accused used to suspect the fidelity of the deceased and he used to beat her. PW 11 - Mandal Revenue Officer deposed that the inquest was held in his presence and found marks around the neck and ear. In view of the fact that the accused alone was in the company of the deceased, the evidence of PWs 8, 9 and 11 strengthen the case of prosecution that the deceased died due to strangulation.

13. Now let us consider the medical evidence. Dr. R. Balaiah, who conducted post-mortem on the body of the deceased, was examined as PW 10. According to him, on 25.01.1997, he received a requisition from MPO, Nizamabad to conduct autopsy on the body of Vimala. He and Dr. Rama Devi conducted autopsy and found the following injuries:

- "1. Abrasions numbering four in the shape of nail markings vertically placed on the left side of the neck.
2. Contusion measuring 2X1 inches on the right side of neck horizontally placed.
3. Ligature mark around the neck with a gap on the left side behind the ear.

The above injuries are anti-mortem in nature. Injury No.1 is caused by nails and injury Nos. 2 and 3 with a blunt object.

**Internal Injuries:**

1. Fracture of hyoid bone right corn.
2. Fracture of 3,4,5,6,7th ribs on r/s and 4,5,6,7th ribs on the l/s near steno castle junction. Lungs were congested, heart congested and peritoiral cavity contains about 200 cc of clotted blood. Intestine and omentum stained with blood.

Small intestine contused in different places. Liver, Spleen, Kidney are congested. Uterus stained with blood. Viscera was sent for chemical analysis.

The result of analysis is there was no poisonous substance. The FBL report is Ex.P-10.

Ex.P11 is preliminary Post-Mortem Examination report issued by

A myself and Doctor Smt. Ramadevi.

Final opinion as to cause of death is Asphyxixi due to throttling. The final report issued by both of us is Ex.P-12. The approximate time of death is 24 - 36 hours prior to PME."

B Though in his preliminary report Ex. P-11, the doctor has not offered his opinion as to the cause of death but in the final opinion, he has specifically stated that the cause of death is "Asphyxixi due to throttling". The analysis of post-mortem report coupled with the evidence of doctor clearly show (a) presence of nail marks (b) contusion over the neck (c) ligature marks around the neck (d) fracture of hyoid bone corn and (e) fracture of 9 ribs right and  
C left sides. Though there was a suspicion that the deceased might have been poisoned on account of the presence of some powder in the glass and a tablet that were present at the scene of occurrence, in view of FSL report i.e. Ex. P-10, there is no proof to the effect that the death was due to poison. On the other hand, the evidence of panchas PWs 8 and 9 coupled with the medical evidence PW 10 as well as the final report (Ex.P-12) clearly show that the  
D deceased died on account of strangulation.

14. The scene of observation report (Ex .P-9) prepared by the investigating officer show that the house of the accused is located in the middle of other houses. In view of the medical evidence and in conjunction  
E with the other circumstances, particularly the undisputed fact that at or about the time of Vanga Vimala's death, no third person excepting the accused and the deceased, was present in the house, it will inescapably lead to the conclusion that within all human probability, it was the accused-appellant and none else, who had murdered the deceased by strangulating her to death. We have already noted that the accused alone was inside the house along with  
F his wife, namely, the deceased. As rightly pointed out by the prosecution, it is not the case of the accused that any other person was residing with them in the same house particularly on the fateful day. Further, as rightly pointed out, there was no explanation from the accused as to when he left the house and came to know about the hanging of the dead body and it would be right  
G in arriving at a conclusion that he alone was responsible for the commission of the offence. If we consider all the above mentioned material circumstances coupled with the medical evidence, it is safe to conclude that the death of the deceased was on account of strangulation. As rightly pointed out, there was no possibility of any other person committing the offence and the accused alone was responsible for the commission of the offence. In such  
H circumstances, we agree with the contention of the State counsel that the

prosecution placed sufficient evidence to establish the guilt of the accused beyond reasonable doubt. As observed by the High Court, the trial Court acquitted the accused only on the simple ground that the doctor, who conducted post-mortem examination, did not offer cause of death in his preliminary report, forgetting that in the final report particularly after receipt of FSL report, the very same doctor has opined that the death was due to "Asphyxixi due to throttling". In the light of the materials available, the conclusion of the trial Judge cannot be accepted and the High Court taking into consideration the totality of the circumstances and the entire materials was right in accepting the case of the prosecution and found the accused guilty.

15. Mr. I.Venkatnarayana, learned senior counsel, submitted that even if this Court accepts the prosecution case in view of alteration of the charge, namely, from Sections 302 to 304B and 201 IPC, the conviction and sentence for an offence under Section 302 IPC by the High Court cannot be sustained. In the earlier part of the judgment, we have referred to Annexures A1 and A2 which clearly show that based on the materials collected the investigating agency altered the offence from Sections 302 IPC to 304B and 201 IPC. The altered charge has not been taken note of by the High Court while arriving at a conclusion against the accused. In the earlier part of our judgment, we have referred to the relevant materials with regard to demand of dowry, suspicion, harassment and torture by the accused and the medical evidence as to the cause of death. In view of the same and in the light of the altered charge memo as one of Section 304B instead of 302 IPC, it is but proper to convict the accused only under Section 304B IPC and not under Section 302 IPC as ordered by the High Court. As per sub-section (2) of Section 304B IPC, the minimum sentence prescribed is 7 years and may extend to imprisonment for life.

16. Considering the fact that the alleged occurrence took place on 24.01.1997 and the appellant/accused undergone the agony for more than ten years, we are of the view that a sentence of seven years would meet the ends of justice. Accordingly, we modify the conviction and sentence imposed by the High Court; instead the appellant/accused is convicted under Section 304 B IPC and impose a sentence of seven years rigorous imprisonment.

17. In the result, the appeal is allowed in part subject to the above modification.