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DANDU JAGGARAJU

v.

STATE OF A.P.

(Criminal Appeal No. 764 of 2008)

B

JULY 20, 2011

[HARJIT SINGH BEDI AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 – ss. 302, 201 and 379 – Victim, member of upper caste married PW1, member of the Scheduled Caste against wishes of her family – Death of the victim six years after the marriage – Allegation against appellant-paternal uncle of the victim that he took away the victim under some pretext and thereafter killed her – Recovery of victim's jewellery, from the pocket of the appellant on his arrest – Trial court on basis of the last seen evidence of the prosecution witnesses, the medical evidence and the recoveries made, convicted the appellant u/ss. 302, 201 and 379 – High Court upheld the conviction – On appeal, held: The family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple – Thus, the motive is clearly suspect – The last seen evidence of the prosecution witnesses is equally uncertain – The ornaments allegedly taken from the deceased is commonly available to all and sundry – It is also difficult to believe that the appellant, who statedly killed his niece on account of family honour, would act so low as to take such trifle jewellery from her dead body – It cannot be accepted that from the date of the incident till the recovery of the ornaments from the appellant i.e. till 24 days after the incident, the appellant continued to move around with the jewellery – Also the said jewellery had not been recovered under a disclosure u/s. 27 of the Evidence Act but was taken on a search of the appellant's person – Thus, the appellant is acquitted.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 764 of 2008.

From the Judgment & Order dated 20.02.2007 of the High Court of Judicature Andhra Pradesh at Hyderabad in Criminal Appeal No. 93 of 2005. B

Siddharth Dave, Jemtiben Ao for the Appellant.

D. Mahesh Babu, Ramesh Allanki, Savita Dhanda for the Respondent.

The following order of the Court was delivered C

ORDER

1. At the very outset, Mr. M.K. Gupta, Advocate, who claims to be a junior counsel with Mr. J.M. Khanna, Advocate appeared before us and prayed that the matter be adjourned for the day as Mr. J.M. Khanna was not yet prepared with the matter and on the earlier date they had missed the case in the list. We are told that Mr. J.M. Khanna is sitting in his Chamber. We, accordingly refuse to recall the order dated 14th July, 2011. D E

2. The deceased Varalakshmi who was a Kshatriya had married P.W. 1, a member of the Scheduled Castes, against the wishes of her family due to which her family had become annoyed with her. The annoyance was particularly, felt by the appellant who was the paternal uncle of the deceased. As per the prosecution story the appellant telephoned the deceased on the 14th of August, 2002, informing her that her grand mother was seriously ill and wanted to see her and that he would come to her village to pick her up later that day. He also told her that as he would not be able to locate her house somebody should be sent to the telephone booth of P.W. 4 to guide him. P.W. 2 thereupon sent her son P.W. 3 to the telephone booth of P.W. 4 and after a short while the appellant too arrived at the telephone booth and was brought to the house of the deceased. She introduced the appellant as her uncle to P.Ws. F G H

A 2 and 3. The deceased, believing the information that her grand
mother was sick, left with the appellant on his white coloured
scooter leaving her young son with P.W. 2. P.W.1, the husband
of the deceased, returned home from work late that evening and
was told by P.Ws. 2 and 3 that his wife had gone with the
B appellant and had not returned since then. As the deceased
did not return that evening or even the next day and as the
efforts of P.W. 1 to search her out remained unsuccessful, he
lodged a First Information Report on the 16th of August to the
effect that his wife had left for the house of her relatives but had
C not been seen thereafter. The dead body of the deceased was,
however, recovered later that day, whereupon a second F.I.R.
was recorded at the instance of P.W. 1 in which he, for the first
time, expressed his suspicion that she had been taken away
under a pretext by the appellant and thereafter killed. The
D appellant was, accordingly, arrested on the 7th September,
2002 and some of the jewellery that the deceased was said to
be wearing at the time of her disappearance was recovered
from his pockets. The dead body of the deceased was also
subjected to a post mortem examination and it was revealed
E that she had died of asphyxia due to smothering as her chunni
had been thrust into her mouth.

3. On the completion of the investigation, the appellant was
brought to trial for offences punishable under Section 302, 201
and 379 of the Indian Penal Code. The trial court on a
F consideration of the evidence of P.W. 1, the first informant and
the husband of the deceased, P.W. 2 the house owner in which
the deceased and P.W. 1 were living, P.W. 3 the son of P.W.
2 who stated that he had gone to the telephone booth of P.W.
4 and had brought the appellant to their house on the 14th of
G August, 2002 and P.W. 4 the telephone booth owner who
deposed to the fact that the appellant had come to the booth
on the day in question where P.W. 3 had been waiting for him
and thereafter gone along with him to the house of P.W. 2, P.W.
6 a press reporter and a colleague of P.W. 1 who had last seen
H the deceased and the appellant at the bus stand at

Ravulapalem and as supported by the medical evidence and the recoveries of the ornaments from the appellant convicted him of the offences charged and sentenced him accordingly. The High Court has, in appeal, confirmed the judgment of conviction and sentence and the matter is before us after the grant of special leave.

4. Mr. Siddharth Dave, the learned Amicus for the appellant, has submitted that there was absolutely no evidence to connect the appellant to the crime and the First Information Report recorded on the 18th August, 2002 was no FIR in the eyes of law as the first FIR recorded was that of a missing person on the 16th August, 2002 and in this report the first informant(P.W. 1) had not expressed his suspicion about the identify of the culprit. He has also pointed out that except for the last seen evidence of P.Ws. 2, 3 and 6, there was no other evidence to connect the appellant with the murder as the recoveries alleged to have been made by the police on the 7th of September, 2002 could not be believed. It has, accordingly, been submitted that the chain of circumstances envisaged in a case resting on circumstantial evidence were clearly missing.

5. Mr. D. Mahesh Babu, the learned counsel for the State of Andhra Pradesh has, however, supported the judgment of the trial court and has pointed out that the last seen evidence and the recoveries by themselves did constitute such a chain and as both the courts below had found that the case had been proved, no case for interference was made out.

6. We have heard the learned counsel for the parties and gone through the evidence on record.

7. It has to be noticed that the marriage between P.W. 1 and the deceased had been performed in the year 1996 and that it is the case of the prosecution that an earlier attempt to hurt the deceased had been made and a report to that effect had been lodged by the complainant. There is, however, no documentary evidence to that effect. We, therefore, find it

A somewhat strange that the family of the deceased had accepted the marriage for about six years more particularly, as even a child had been born to the couple. In this view of the matter, the motive is clearly suspect. In a case relating to circumstantial evidence, motive is often a very strong
 B circumstance which has to be proved by the prosecution and it is this circumstance which often forms the fulcrum of the prosecution story.

8. We also see that the last seen evidence of P.Ws. 2, 3 and 6 is equally uncertain. Significantly, the statements of
 C P.Ws.2 and 3 were recorded by the Magistrate for the first time under Section 164 about four months after the alleged incident and though both witnesses had deposed that they would be able to identify the appellant who was otherwise a stranger to them, no effort had been made to hold a test identification
 D parade. Mr. Mahesh Babu, has, however, placed reliance on the statement of P.W. 6 who is stated to be a completely independent witness. Even this witness had testified that he did not know the appellant personally but he still claimed that he had seen the appellant at the bus depot on the day in question
 E along with the deceased and that he was called upon to identify him for the first time in Court when his statement was recorded on the 4th of November, 2004 which was two and a half years after the murder.

F 9. The only other piece of evidence against the appellant is the recovery of the ornaments allegedly taken from the deceased. We find that the jewellery is of the variety known as 'disco jewellery' and is commonly available to all and sundry. It is also difficult to believe that the appellant, who stately killed
 G his niece on account of family honour, would act so low as to take the jewellery which was little more than trinkets from her dead body. We also find it completely unacceptable that though the incident happened on the 14th of August, 2002 the appellant had continued to move around with the jewellery still in his pocket till its recovery from him on the 7th of September, 2002.
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We also see from the record that the said jewellery had not been recovered under a disclosure under Section 27 of the Evidence Act but was taken on a search of his person. This circumstance, therefore, does not even remotely support the prosecution story in any manner. A

10. For the reasons recorded above, we find that the judgments of the courts below cannot be sustained. We, accordingly, allow the appeal and order the appellant's acquittal. We are told that he is in custody. He shall be released forthwith if not wanted in any other case. B

11. The fee of the Amicus is fixed at Rs. 7,000/-. C

N.J.

Appeal allowed.