ESHWARAPPA A

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1951 of 2012)

JULY 24, 2015 B

[T.S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

Penal Code, 1860: ss.302, 498-A and 201 – Dowry death – Death by strangulation – Circumstantial evidence – Allegation that the appellant-husband developed illicit relationship with another woman and mistreated his wife and made demand of dowry – On the fateful day, wife requested the appellant to give some money to her so that she could take her ailing son to hospital – Appellant asked her to come to his field and later the deceased was found dead with ligature marks around her neck – Trial court found him guilty u/ss. 302, 498-A and 201 – High Court upheld conviction holding that deceased was last seen alone in the company of the appellant and the conduct of appellant of not informing the police or parents of the deceased regarding the incident and absconding from the place of incident was unnatural – On appeal, held: All prosecution witnesses deposed on similar lines regarding the treatment given to the deceased by the appellant and the illicit relationship with the other woman – The material facts were fully established – Theory of suicide also rejected – Conviction u/ss.302 and 201 upheld – However, conviction u/s. 498-A set aside. C D E F

Partly allowing the appeal, the Court G

HELD: 1. The trial court as also the High Court found the version given by PW-1, the mother of the deceased, to be fully reliable. This witness had deposed that the deceased used to frequently visit her parental H

A house and tell her parents about the illicit intimacy between the appellant and A-2. She would also complain to her parents that the appellant was living with A-2. PW-1 advised the appellant to end his illicit relationship with A-2 but the appellant paid no heed to B that advice even after a panchayat was convened to resolve the matter. The panchayat was attended by PW-6 and PWs 12 to 14. The appellant had, before the panchas agreed to discontinue his illegal liaison and lead a happy married life with the deceased. It was on that C assurance given to the panchas, that the latter had advised the parents of the deceased not to lodge any complaint against the appellant. However, the deceased had returned to her parents' house just about 15 days after the pancyahat, whereupon PW-1 questioned the D appellant whether he would end his illicit relationship with A-2. He had in reply said that he would rather give up his wife than to discontinue his relationship with A-2. PW-6 and PWs 12 to 14 have similarly deposed about E the panchayat held in the village and the advice given to the appellant regarding discontinuation of his illicit relationship with A-2. These witnesses have deposed that the appellant had before the panchayat promised that he would end his relationship with A-2 and lead a F happy married life with the deceased which he had failed to abide by. Both the Trial Court and the High Court have found the depositions of these witnesses to be free from any blemish. It was found that these witnesses do not bear any enmity or grudge against the appellant to make G them unreliable. [paras 6, 7] [987-E-H; 988-A-E]

2. The deposition of PW-1 in regard to the events that took place on the date of incident has also been found to be reliable. This witness has deposed that when H she came to the house of the appellant to see her

daughter, she found that the deceased had taken her child to the hospital and returned home in the evening on 6th November, 2005. The appellant had, however, stayed in the house of A-2 that night. The next day, the deceased had demanded money from the appellant so that she could take the child back to the hospital. The accused asked the deceased to come to the field where he would pay the money to her. The witness and her husband left for the bus stand to return home while the deceased had along with her child gone to the field where the appellant had called her to collect the money. She was sometime later found dead under a tree which information was conveyed to the parents the same day. PW-4 is another witness who deposed that he saw the deceased going in front of his shop towards the land of her husband along with her child. About 15 minutes later the appellant came to the shop of this witness who asked him to return the money which he had borrowed. PW-5 is the father of the deceased who has also deposed on the same lines as PW-1 regarding the treatment given to the deceased by the appellant and the illegal demand for dowry made upon them. PW-11 is the real brother of PW-1 and brother-in-law of PW-5. He too has supported the prosecution case in regard to the illicit intimacy between the appellant and A-2. PW-12 is also the maternal uncle of the deceased has supported the prosecution case. PW-14 is one of the panchas who too has supported the prosecution case and clearly deposed that he attended the panchayat in which the appellant's illicit affair with A-2 was discussed. [para 8 to 10, 12] [988-F-H; 989-A-G; 990-C-E]

3. The trial court and so also the High Court has rejected the story of suicide by the deceased and rightly so, for reasons more than one. *Firstly,* because the death

A **in the case at hand occurred because of strangulation/ constriction force around the neck leading to asphyxia and shock as observed by the doctor which is possible not necessarily by hanging, although the doctor has opined it could be caused probably by hanging also.**
B ***Secondly*, because if death had occurred because of hanging, she would have been discovered by the witnesses in a hanging position, unless of course somebody had upon seeing her hanging, brought her down and placed the body on the ground or the rope by**
C **which she hung herself had itself snapped in which event there would have been a rope partly tied to the branch of the tamarind tree and partly around her neck with a noose which the witnesses say was not there.**
D ***Thirdly*, because it is nobody's case that she was carrying a rope with herself when she was seen going towards the field. The presence of the rope and the heap of stones before the branch was obviously a make-believe situation created by the appellant, who was seen**
E **by the witness, returning from the field. *Fourthly*, because there was no immediate provocation for the deceased to take the step to commit suicide. All that she wanted was money from her husband to take her child to the hospital for treatment. Besides, the parents of the**
F **deceased were also present in the village around the time the deceased went towards the field which only shows that there was no intense or great provocation that could have led her to commit suicide. Fifthly, because the classic signs of death by hanging were all conspicuously**
G **absent in the case at hand as is evident from the post-mortem report prepared by the doctor. [Para 16-17] [991-A-G; 992-F-H]**

Modi's Medical Jurisprudence and Toxicology (23rd
H ***Edition)* – referred to.**

4. The judgment and order passed by the Trial Court as affirmed by the High Court is upheld in so far as the same convicts and sentences the appellant to imprisonment for the offence punishable under Section 498A of the Indian Penal Code shall stand set aside. The appeal insofar as the same challenges the conviction and sentence of imprisonment awarded to the appellant for the offence under Section 302 IPC as also the sentence awarded under Section 201 IPC together with the amount of fine imposed and the sentence in default shall stand dismissed. [para 18] [993-B-D]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1951 of 2012

From the Judgment and Order dated 10.08.2011 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 1676 of 2007

Ranbir Singh Yadav for the Appellant.

K. Parameshwar, V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

T. S. THAKUR, J. 1. This appeal arises out of a judgment and order dated 10th August, 2011 passed by the High Court of Karnataka at Bangalore, whereby the High Court has dismissed Criminal Appeal No.1676 of 2007 filed by the appellant thereby affirming his conviction for offences punishable under Sections 302, 498A and 201 of the Indian Penal Code, 1860 and the varying sentences of imprisonment and fine awarded to him for the same.

2. The deceased-Latha and the appellant herein got married to each other on 20th March, 2003. The prosecution version is that the deceased-Latha and her husband the appellant herein lived happily for a few months after their

A marriage in March 2003 during which time Latha conceived and gave birth to a female child. The marital relationship, however, soured when the appellant developed illicit relations with one Sarpina @ Sarfunnisa arrayed as accused no.2 before the Trial Court. The deceased-Latha, but naturally took B exception to this relationship and informed her parents about the same who had a panchayat convened in the village to resolve the matter. The panchayat, according to the prosecution, advised the appellant to end his relationship with Sarpina, his paramour, which the appellant agreed to do. That C commitment was however observed but only in breach as the illicit relationship between the appellant and Sarpina continued resulting in frequent quarrels between the appellant and the deceased-Latha. The prosecution case is that although the D parents of the deceased had given dowry articles to the deceased including a sum of rupees one lakh towards cash, the appellant was demanding more money for purchase of a site. In order to satisfy that demand, the parents of the deceased had mortgaged their land and paid a sum of E Rs.50,000/- to the appellant. It is also alleged that the appellant was neglecting the deceased and was residing with Sarpina, accused no.2. The deceased was provoked by this conduct and is alleged to have gone to the house of Sarpina (A-2) to lodge her protest in an attempt to wean the appellant away F from the illicit relationship. This provoked the appellant, who assaulted the deceased. The parents of the deceased had in that background taken the deceased away to her parental home with her minor child. The prosecution case is that a day prior to the incident the parents of the deceased brought the G deceased-Latha back to her matrimonial home in village Lakya, but the appellant's cruel behaviour towards her continued unabated. On the fateful day, the deceased appears to have asked the appellant to pay her some money so that she could take her sick child to the doctor. The appellant is H alleged to have asked her to come to the field, where the

appellant was going for work to collect the money. According to the prosecution, Latha followed her husband to the field while her parents returned to their village, but only to receive by evening the sad news that their daughter was lying dead under a tamarind tree near the land of the appellant in his village. They rushed to the village and the place of occurrence only to find that the deceased had died of strangulation. The matter was, thereupon, reported to the police who registered a case, commenced and completed the investigation and filed a charge-sheet not only against the appellant whom the prosecution accused of committing offences punishable under Sections 498A, 302 and 201 IPC but even against the parents of the appellant and Sarpina, the alleged lady love of the appellant.

3. At the trial, the prosecution examined as many as 20 witnesses to prove the charges against the accused persons. The Trial Court, however, came to the conclusion that the prosecution had failed to prove its case against the accused persons except the appellant who was found guilty for offences punishable under Sections 498A, 302 and 201 IPC. He was accordingly sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- under Section 302 IPC. The fine amount was directed to be paid to the grandparents of the child left behind by the deceased. He was also sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/- under Section 498A IPC. In default, three months imprisonment was prescribed. For the offence punishable under Section 201 IPC, the appellant was sentenced to undergo imprisonment for three years and to pay a fine of Rs.2,000/-. In default of payment of fine, he was sentenced to undergo imprisonment for three months. All the sentences were directed to run concurrently.

4. Aggrieved by the judgment and order passed by the Trial Court, the appellant preferred Criminal Appeal No.1676

A of 2007 which was heard and dismissed by the High Court in terms of its order impugned in this appeal. The High Court, on a careful reappraisal of the evidence on record, came to the conclusion that the appellant had been rightly found guilty by the Trial Court. The High Court found the following B circumstances to have been fully established by the evidence on record:

(1) That the appellant had developed illicit intimacy with Sarpina (A-2) because of which there was no cordiality C between the appellant, on the one hand, and his wife, the deceased on the other.

(2) On the date of the incident at about 7.00 a.m. when the deceased requested the appellant to give some money to her so that she could take her child to the D hospital, the appellant asked the deceased to come to the field where he would give her the money she required.

(3) The deceased followed the instructions given to her E and went to the field where the appellant was working. She was thus last seen alone in the company of the appellant.

(4) The death of the deceased was homicidal in nature F caused due to asphyxia. The ligature marks found around the neck of the deceased proved that there was constriction of the neck of the deceased because of exertion of force.

(5) The appellant had piled a heap of stones and tied a G rope to the branch of the tamarind tree, only to support a false plea in defence that the deceased had committed suicide.

(6) The conduct of the appellant was unnatural and H incompatible with his innocence. He did not inform the

police or the parents of the deceased and disappeared from the scene of occurrence, after the commission of the offence. A

5. The High Court, at the same time, held that the depositions of the parents of the deceased regarding demand and acceptance of dowry before or after marriage were neither consistent nor credible to provide a basis for convicting the appellant under Section 498A IPC. The High Court held that the financial condition of the parents of the deceased was precarious as they were living in a Janatha house and working as labourers in a saw-mill in village Gavanahalli. Having said that the High Court dismissed the appeal in toto although on the finding recorded by it the High Court could and indeed should have set aside the conviction of the appellant under Section 498A IPC. B C D

6. We have heard learned counsel for the parties at some length who have taken us through the evidence on record and the judgments delivered by this Court. The Trial Court and so also the High Court have both concurrently held the material facts to have been fully established. For instance the Trial Court as also the High Court have found the version given by Chandramma (PW-1), who happens to be the mother of the deceased-Latha, to be fully reliable. This witness had deposed that the deceased used to frequently visit her parental house and tell her parents about the illicit intimacy between the appellant and Sarpina (A-2). She would also complain to her parents that the appellant was living with Sarpina (A-2). Chandramma (PW-1) advised the appellant to end his illicit relationship with Sarpina (A-2) but the appellant paid no heed to that advice even after a panchayat was convened to resolve the matter. The panchayat was attended by PW-6 and PWs 12 to 14. The appellant had, before the panchas agreed to discontinue his illegal liaison and lead a happy married life E F G H

A with the deceased. It was on that assurance given to the panchas, that the latter had advised the parents of the deceased not to lodge any complaint against the appellant. Despite the panchayat and the advice given to the appellant, however, the deceased had returned to her parents' house just about 15 B days after the pancyahat, whereupon Chandramma (PW-1) had gone to Lakya village and questioned the appellant whether he would end his illicit relationship with Sarpina (A-2). He had in reply said that he would rather give up his wife deceased-Latha than to discontinue his relationship with Sarpina (A-2). C

7. PW-6 and PWs 12 to 14 have similarly deposed about the panchayat held in the village and the advice given to the appellant regarding discontinuation of his illicit relationship with Sarpina (A-2). These witnesses have deposed that the D appellant had before the panchayat promised that he would end his relationship with Sarpina (A-2) and lead a happy married life with the deceased-Latha wherein he had failed to abide by. Both the Trial Court and the High Court have found the depositions of these witnesses to be free from any blemish. E It was found that these witnesses do not bear any enmity or grudge against the appellant to make them unreliable. These witnesses had also advised the appellant to maintain cordial relationship with the deceased and to discontinue his illicit relationship with Sarpina (A-2) who was ten years older to him. F

8. The deposition of Chandramma (PW-1) in regard to the events that took place on the date of incident has also been found to be reliable. This witness has deposed that when she came to the house of the appellant to see her daughter, G she found that Latha had taken her child to the hospital and returned home in the evening on 6th November, 2005. The appellant had, however, stayed in the house of Sarpina (A-2) that night. The next day, the deceased had demanded money from the appellant so that she could take the chid back to the H hospital. The accused asked the deceased to come to the

field where he would pay the money to her. The witness and her husband left for the bus stand to return home while the deceased had along with her child gone to the field where the appellant had called her to collect the money. She was sometime later found dead under a tree which information was conveyed to the parents the same day.

9. L.G. Shivaswamy (PW-4) is another witness who deposed that he saw the deceased going in front of his shop towards the land of her husband along with her child. About 15 minutes later the appellant came to the shop of this witness who asked him to return the money which he had borrowed. The witness also deposed about the panchayat held two months prior to the occurrence regarding the ill-treatment meted out to the deceased by the appellant. In the course of the panchayat, the panchs had advised the appellant not to assault his wife. In response, the appellant had assured the panchas that he would maintain cordiality with his wife. According to the witness, there was no intimacy between the appellant and Sarpina (A-2). The witness was at this stage declared hostile, cross-examined and confronted with his statement under Section 161 Cr.PC. in which he had mentioned about the illicit relationship between the appellant and Sarpina (A-2) and the assurance given to the panchas that he would end the said relationship.

10. Mari Shetty (PW-5) is the father of the deceased-Latha who has also deposed on the same lines as Chandramma (PW-1) regarding the treatment given to the deceased by the appellant and the illegal demand for dowry made upon them.

11. Reference may also be made to the deposition of L.L. Nagesh (PW-6) who has deposed that the relationship between the appellant and the deceased was not cordial because of the illicit liaison between the appellant and Sarpina

A (A-2) since 2-3 years. He also stated that because of the illicit relationship, the appellant was always living in the house of Sarpina (A-2). A panchayat had even taken place, according to this witness, in which the appellant had given an assurance that he would end his illicit relationship. On the date of the B incident, the witness claims to have seen the deceased and her parents near the shop of one master at about 10.30 a.m.

12. Rangaswamy (PW-11) is the real brother of (PW-1) and brother-in-law of (PW-5). He too has supported the C prosecution case in regard to the illicit intimacy between the appellant and Sarpina (A-2). He has also supported the prosecution version for demand for dowry. Chandrashekhar (PW-12) is also the maternal uncle of the deceased has supported the prosecution case and had visited the matrimonial D house of the deceased to resolve the dispute between the couple. K.B. Shekharappa (PW-14) is one of the panchas who too has supported the prosecution case and clearly deposed that he attended the panchayat in which the appellant's illicit affair with Sarpina (A-2) was discussed. The panchas had E advised the appellant to end his illegal relationship.

13. The only other witness whose deposition is relevant is Dr. Nagesh S. Adiga (PW-15) who conducted the post-mortem examination of the deceased and found ligature marks F around her neck. The witness in his deposition has said:

> "On further examination of the body, I did not notice any external injuries except for the ligature mark around the neck.
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> G
>
> The ligature mark was oblique and was extending across the front of the neck from the angle of left jaw and measured 1.5 cms in width and 16 cms in length and it was situated just 2.5 cms below the right mastoid with H knot mark measuring 2.5 cms over the left mastoid."

14. The witness has described the cause of death nearly 10 days after the post-mortem examination in reply to a communication received from the Circle Police Inspector in the following words: A

"(i) The cause of death is due to constriction force obliquely around neck leading to asphyxia and shock is most probably due to hanging. B

(ii) The cause of death is ante mortem in nature and death has occurred in less than 24 hours. C

(iii) The ligature mark is ante-mortem in nature."

15. In the light of the evidence on record, it was argued on behalf of the appellant that there was no eye witness to the occurrence and the entire prosecution case was based on circumstantial evidence. It was also submitted that the circumstances sought to be relied upon do not form a complete chain so as to lead the Court to an irresistible conclusion that the death of the deceased was homicidal and the appellant was responsible for the same. In particular, reliance was placed by learned counsel for the appellant upon the deposition of the doctor to suggest that the death could have been caused by hanging. D E

16. The Trial Court and so also the High Court has rejected the story of suicide by the deceased and in our opinion rightly so, for reasons more than one. *Firstly,* because the death in the case at hand occurred because of strangulation/ constriction force around the neck leading to asphyxia and shock as observed by the doctor which is possible not necessarily by hanging, although the doctor has opined it could be caused probably by hanging also. *Secondly*, because if death had occurred because of hanging, she would have been discovered by the witnesses in a hanging position, unless of F G H

A course somebody had upon seeing her hanging, brought her down and placed the body on the ground or the rope by which she hung herself had itself snapped in which event there would have been a rope partly tied to the branch of the tamarind tree and partly around her neck with a noose which the witnesses B say was not there. *Thirdly*, because it is nobody's case that she was carrying a rope with herself when she was seen going towards the field. The presence of the rope and the heap of stones before the branch was obviously a make-believe situation created by the appellant, who was seen by the witness, C returning from the field. *Fourthly*, because there was no immediate provocation for the deceased to take the step to commit suicide. All that she wanted was money from her husband to take her child to the hospital for treatment. Besides, D the parents of the deceased were also present in the village around the time the deceased went towards the field which only shows that there was no intense or great provocation that could have led her to commit suicide. Fifthly, because the classic signs of death by hanging as reported in ***Modi's Medical Jurisprudence and Toxicology (23rd Edition)*** like E face being usually pale; saliva dribbling out of the mouth down on the chin and chest; Neck Stretched and elongated in fresh bodies; Ligature mark being oblique, non-continuous and placed high up in the neck between the chin and the larynx, the F base of the groove or furrow being hard yellow and parchment like; Abrasions and ecchymoses around the edges of the ligature mark, subcutaneous tissues under the mark being white or glistening; carotid arteries, internal coats being ruptured; fracture or dislocation of the cervical vertebrae were G all conspicuously absent in the case at hand as is evident from the post-mortem report prepared by the doctor.

17. In the totality of the circumstances and having regard to the nature of the evidence which the courts below H have found credible on all material aspects of the prosecution

case, we do not see any compelling reason to interfere with the view taken by the Trial Court as affirmed by the High Court. The only modification no matter inconsequential in the facts and circumstances of the case that we may make is the setting aside of the conviction of the appellant for the offence punishable under Section 498A Indian Penal Code.

18. We, accordingly, allow this appeal but only in part and to the limited extent that the judgment and order passed by the Trial Court as affirmed by the High Court in so far as the same convicts and sentences the appellant to imprisonment for the offence punishable under Section 498A of the Indian Penal Code shall stand set aside. The appeal insofar as the same challenges the conviction and sentence of imprisonment awarded to the appellant for the offence under Section 302 IPC as also the sentence awarded under Section 201 IPC together with the amount of fine imposed and the sentence in default shall stand dismissed.

Devika Gujral

Appeal partly allowed.