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STATE OF A.P.

v.

PATCHIMALA VIGNESWARUDU @ VIGGANNA

@ GANAPATHI

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(Criminal Appeal No. 436 of 2008)

JANUARY 06, 2016

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

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Penal Code, 1860: s.302 – Murder – Death due to strangulation – Allegation against the accused-husband that he murdered his wife as he had strained relations with her – Conviction by trial court – Acquittal by High Court – State’s appeal against acquittal – Held: Evidence of the witnesses was to the effect that the deceased was seen in company of the accused-husband soon before her death – Accused absconded from the village after the incident – The chain of circumstances was complete and led only to the conclusion that it was the accused and he alone, who committed murder of the deceased – Order of conviction is restored.

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Allowing the appeal, the Court

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HELD: The medical evidence on record proved that the deceased died a homicidal death and cause of death was asphyxia due to strangulation. As far as relation between the accused and the deceased is concerned, the prosecution evidence on record, as stated by PW-1 and PW-2 was corroborated by the fact that the accused himself has admitted his marriage with the deceased, and his strained relations with her. Apart from that it is proved on record that on the date of incident, before midnight, the accused took his wife (deceased) to night show of movie. PW-1 (father of the deceased) and PW-2 (mother of the deceased) have stated that a day before the dead body of the deceased was found, the accused had come to their house and took his wife on the pretext that he was taking her to night show cinema. Also it is established from the statement of PW-4 that he last saw the deceased with the accused walking towards Ayinavilli (the village where later dead body of the deceased was found). PW-5, who is the gatekeeper of Devi Ganesh Theatre at Mukteswaram, told

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that he knew both accused and the deceased, and they purchased two tickets for last show at 8.00 p.m. Both of these witnesses have proved the fact that soon before her death the deceased was last seen with the accused. Yet another circumstance against the accused brought on the record by PW-6, who has stated that he saw the accused coming alone after midnight from the side of Ayinavilli and boarding quarry lorry heading to Mummidivaram. Lastly, it is stated on record by the prosecution witnesses that the accused absconded after the incident. The chain of circumstances is complete and leads only to the conclusion that it was the accused/ respondent and he alone, who committed murder of the deceased. [Paras 10 to 15, 18] [71-B-G; 72-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 436 of 2008

From the Judgment and Order dated 24.02.2005 of the High Court of Judicature Andhra Pradesh at Hyderabad in Criminal Appeal No. 1313 of 2002

Prerna Singh, Guntur Prabhakar, D. Bharathi Reddy for the Appellant.

Arun K. Sinha (A. C.) for the Respondent.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 24.2.2005, passed by the High Court of Judicature Andhra Pradesh at Hyderabad, whereby Criminal Appeal No. 1313 of 2002, filed by accused/respondent Patchimala Vigneswarudu @ Vigganna @ Ganapathi, is allowed, and he is acquitted of the charge of murder punishable under Section 302 of Indian Penal Code (IPC), and order of conviction and sentence, passed against him by II Additional Sessions Judge, East Godavari at Rajahmundry in Sessions Case No. 363 of 2001, was set aside.

2. Prosecution story, in brief, is that Pachimala Ganga, daughter of PW-1 Jithuka Nagooru and PW-2 Jithuka Veeramma, got married to the accused/respondent. Their marriage was solemnized some two years before the date of incident. After marriage deceased Pachimala Ganga joined company of her husband at Cheyyeru Agraharam, and started living with him. After some time the accused came to know that he was

A suffering from venereal disease. He suspected that he might have
contacted it through his wife. This started souring of relations between
the two. According to the prosecution, the accused thereafter started
ill-treating his wife, on which she left him and went to her parents' house.
Sarojini, sister of the accused, went to the house of the parents of the
deceased and promised that the deceased would not be subjected to ill-
B treatment. On this personation deceased went again to Cheyyeru
Agraharam, i.e. village of her husband, but she was again allegedly
subjected to harassment. As such, prior to ten days before her death
PW-1 and PW-2 (parents of the deceased) took her back to their house.

C 3. On 5.8.2001 at 6.00 p.m. the accused himself went to the house
of his in-laws (PW-1 and PW-2) and took his wife on the pretext that
they were going to watch night show of movie 'Eduruleni Manishi' in
Devi Ganesh theatre in neighbouring Mukteswaram village. According
to prosecution, the couple went to the movie but the accused had a plan
to kill her. After midnight while returning home, the accused took his
D wife towards coconut tope (grove of PW-8 Ponakala Satyanarayana
Murthy) and murdered his wife by strangulating her. Thereafter, the
accused left the place and absconded. PW-1 and PW-2, when their
daughter did not return, started searching for her. On 6.8.2001 in the
morning her dead body was found in the coconut tope. PW-7 Yalla
Satyanarayana noticed the dead body and told about the same to PW-1
E and PW-2.

4. PW-1 Jithuka Nagooru, father of the deceased, gave First
Information Report on 6.8.2001 at 8.00 a.m., to the police on which
crime No. 50 of 2001 was registered. PW-15 Inspector A. Subbarao
investigated the crime. PW-9 Relangi Sri Veera Venkata Satyanarayana,
F on instructions of the Investigating Officer, prepared inquest report (Ex.
P-3) after the dead body was taken into possession. PW-12 Dr. A.
Subbarao conducted post mortem examination on the dead body of the
deceased and prepared autopsy report (Ex. P-22). After recording the
ante mortem injuries, the Medical Officer opined that the deceased had
G died due to asphyxia caused by strangulation with ligature. On 9.8.2001
the accused/respondent was arrested by the Investigating Officer near
Kanakadurga Temple. After interrogating witnesses and on completion
of investigation a charge sheet was filed by the Investigating Officer
against accused Patchimala Vigneswarudu @ Vigganna @ Ganapathi
H for his trial in respect of offence punishable under Section 302 IPC.

5. It appears that I Additional Judicial First Class Magistrate, Amalapuram, committed the case to the Court of Sessions of East Godavari Division of Rajahmundry. Learned Sessions Judge, after hearing the parties, on 28.02.2002, framed charge of offence punishable under Section 302 IPC against accused Patchimala Vigneswarudu @ Vigganna @ Ganapathi and explained the same to him in Telugu to which the accused pleaded not guilty and claimed to be tried.

6. The prosecution got examined PW-1 Jithuka Nagooru (father of the deceased), PW-2 Jithuka Veeramma (mother of the deceased), PW-3 Gannavarapu Suryanarayana (Sarpanch of village Ayinavilli), PW-4 Inje Anjaneyulu (who last saw the deceased with the accused going after night show from Mukteswaram towards Ayinavilli), PW-5 Jinipe Venkateswara Rao (an employee of cinema hall who sold the tickets of night show to the accused), PW-6 Jithuka Vijaya Kumar (the witness who saw the accused returning alone from Ayinavilli towards Amalapuram after 12.30 a.m. and boarding quarry lorry heading for Mummidivaram), PW-7 Yalla Satyanarayana (who is witness of the fact that when the dead body was found in coconut tope, there was saree around her neck), PW-8 Ponakala Satyanarayana Murthy (who also saw the dead body lying in the coconut tope), PW-9 Relangi Sri Veera Venkata Satyanarayana (who prepared the inquest report), PW-10 K.V.V. Satyanarayana (who photographed the dead body), PW-11 Dr. Ch. Venkata Reddy (who medically examined the accused and reported that he was suffering from balanoposthitis – sexually transmitted venereal disease), PW-12 Dr. A. Subbarao (who conducted post mortem examination on the dead body of the deceased), PW-13 M. Subrahmanyam (police constable who took the dead body for post mortem examination in sealed condition), PW-14 G. S.I. Devakumar (who registered the crime) and PW-15 Inspector A. Subbarao (who investigated the crime).

7. Oral and documentary evidence was put to the accused under Section 313 of Code of Criminal Procedure, 1973, in reply to which he denied having gone to the house of PW-1 and PW-2 to take his wife or having her taken to night show cinema. However, he admitted that he suffered from venereal disease, and suspected that it was transmitted to him through his wife. He further stated that after his wife left for her parental house, she did not come back.

8. The trial court, after considering the evidence on record, found

- A the accused guilty of charge of offence punishable under Section 302
IPC, and convicted and sentenced him to imprisonment for life and
directed to pay fine of Rs.200/- in default of payment of which the accused
was directed to further undergo simple imprisonment for a period of one
month. Against said order dated 18.9.2002, passed by II Additional
Sessions Judge, Rajahmundry, criminal appeal was filed by the convict
B before the High Court, and after hearing the parties, the High Court
allowed the appeal and acquitted the accused/respondent of the charge
on the ground that chain of circumstances is not complete leading to a
definite conclusion that the accused alone was responsible for commission
of offence. The State has preferred this appeal against the impugned
C order passed by the High Court acquitting the accused.

9. Learned counsel for the State argued that the High Court has
committed grave error of law in acquitting the accused, by reversing the
conviction recorded by the trial court. It is contended that the chain of
circumstances is complete and the charge is fully proved on the record.
D On the other hand, learned Amicus Curiae appearing for the respondent
submitted that the chain of circumstances is not complete, and where
two views are possible on the basis of the evidence on record, the order
of acquittal passed by the High Court cannot be interfered with.

10. Before further discussion we think it just and proper to mention
E the ante mortem injuries found on the dead body of the deceased by
PW-12 Dr. A Subbarao, who conducted autopsy on 6.8.2001 and prepared
Ex. P-22. Describing the condition of the body at the time of post mortem
examination, the Medical Officer has stated that eyes of the deceased
were closed, mouth was open with tongue protruding between upper
and lower teeth, blood stained froth was coming from both nostrils and
F mouth. Following ante mortem injuries were noted by the doctor: -

- (i) Ligature mark completely encircling the neck transverse in direction
below the thyroid cartilage. Width of ligature mark 4 to 5 mms.
(ii) Abrasions were present over the ligature mark. Scratches due to
nails are seen over the ligature on the right side.
G (iii) Abrasion over the middle third of the right arm of size 3 x 3 cm
reddish in colour.

- On internal examination, the Medical Officer (PW-12) found that
echymosis and congestion was seen in sub-cutaneous tissue under the
H ligature mark. Hyoid bone was intact. Thyroid cartilage was intact.

Larynx, trachea and bronchi were congested and filled with frothy blood stained fluid. Haemorrhages were seen in mocososa of larynx. The Medical Officer opined that the deceased had died due to asphyxia caused by strangulation with ligature. PW-12 Dr. A. Subbarao further stated that death could have been occurred by putting saree (MO-1) around the neck of the deceased by tightening it and by pulling with force. The above medical evidence on record proves that the deceased died a homicidal death and cause of death was asphyxia due to strangulation.

11. As far as relation between the accused and the deceased is concerned, the prosecution evidence on record, as stated by PW-1 and PW-2, is corroborated by the fact that the accused himself has admitted his marriage with the deceased, and his strained relations with her.

12. Apart from the above, it is proved on record that on the date of incident, before midnight, the accused took his wife (deceased) to night show of movie. PW-1 Jithuka Nagooru (father of the deceased) and PW-2 Jithuka Veeramma (mother of the deceased) have stated that a day before the dead body of the deceased was found, the accused had come to their house and took his wife on the pretext that he was taking her to night show cinema.

13. Also it is established from the statement of PW-4 Inje Anjaneyulu that he last saw the deceased with the accused walking towards Ayinavilli (the village where later dead body of the deceased was found). PW-5 Jinipe Venkateswara Rao, who is the gatekeeper of Devi Ganesh Theatre at Mukteswaram, told that he knew both accused and the deceased, and they purchased two tickets for last show at 8.00 p.m. Both of these witnesses have proved the fact that soon before her death the deceased was last seen with the accused.

14. Yet another circumstance against the accused brought on the record by PW-6 Jithuka Vijaya Kumar, who has stated that he saw the accused coming alone after midnight from the side of Ayinavilli and boarding quarry lorry heading to Mummidivaram.

15. Lastly, it is stated on record by the prosecution witnesses that the accused absconded after the incident.

16. The recovery of dead body in the morning of 6.8.2001, is proved not only by PW-1 and PW-2, but also by PW-7 Yalla Satyanarayana, PW-8 Ponakala Satyanarayana Murthy and PW-9 Relangi Sri Veera Venkata Satyanarayana, which gets corroborated from

A Ex. P-2.

17. Succinctly stated, following circumstances are found to have been proved on record: -

(i) Admittedly, the deceased was wife of the accused and they had strained relations.

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(ii) The accused was suffering from venereal disease which he suspected to have sexually transmitted through his wife.

(iii) On 5.8.2001 the accused had gone to his in-laws' house and took his wife with him.

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(iv) The deceased and the accused were last seen in the mid night (intervening night of 5.8.2001 and 6.8.2001) going together from cinema hall after night show, towards village Ayinavilli.

(v) The accused was last seen returning alone from village Ayinavilli, after midnight at about 12.30 a.m., i.e. 0030 hrs. on 6.8.2001.

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(vi) The dead body of the deceased was recovered next morning on 6.8.2001 from village Ayinavilli.

(vii) The deceased had died homicidal death and cause of her death was asphyxia due to strangulation.

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(viii) It is also established that the accused absconded from the village after the incident.

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18. In our opinion, above chain of circumstances is complete and leads only to the conclusion that it was the accused/ respondent and he alone, who committed murder of the deceased. The view taken by the High Court that the chain of circumstances is not complete merely for the reason that drunkenness of the accused is not established, and that the accused cannot be said to have got sexually transmitted disease through his wife, is the view based on irrelevant considerations and could not have been taken in the present case after re-appreciating the evidence on record. It is proved on the record by PW-11 Dr. Venkata Reddy that the accused was suffering from balanoposthitis, and PW-1 Jithuka Nagooru and PW-2 Jithuka Veeramma have proved the fact that the accused suspected that it might have been transmitted to him through his wife. What is more important is that in his statement under Section 313 of Code of Criminal Procedure, when above evidence was put to

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the accused, he has accepted said fact. What he denied is that he did not go to take his wife to her parents' house. He further denied that he did not take her to night show of any movie, nor committed her murder. In the above circumstances, we are of the opinion that in the present case only view possible was the one taken by the trial court. As such, it is a fit case where order of acquittal recorded by the High Court requires interference. Therefore, on the basis of the discussion on evidence, as above, we are of the view that this appeal deserves to be allowed.

19. Accordingly, the appeal is allowed. The impugned judgment and order passed by the High Court is set aside. The order of conviction and sentence recorded by the II Additional Sessions Judge, Rajahmundry in Sessions Case No. 363 of 2001 against the accused/respondent is restored. The accused/respondent shall be taken into custody by the trial court to make him serve out the remaining part of the sentence.

Devika Gujral

Appeal allowed.

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