

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CRIMINAL APPEAL No.707 OF 2010

Between:

Ganta Nooka Raju, S/o Late Appal Rao,
R/o, Pathakandarada Village, East Godavari District
and another

... APPELLANTS

AND

The State of A.P.
rep by its Public Prosecutor,
High Court of A.P., Hyderabad.

...RESPONDENT

-
DATE OF JUDGMENT PRONOUNCED: 03.09.2015

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SUBMITTED FOR APPROVAL:

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS**

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes |
| 3. Whether Their Lordship wish to see the
fair copy of the Judgment? | No |

· **THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS**

+ CRIMINAL APPEAL No. 707 of 2010

% Dated 03.09.2015

Ganta Nooka Raju, S/o Late Appal Rao,
R/o, Pathakandarada Village, East Godavari District
and another

....Appellants

Vs.

\$ The State of A.P.
rep by its Public Prosecutor,
High Court of A.P., Hyderabad.

....Respondent

! Counsel for the Appellants : Sri T. Pradhyumna Kumar Reddy

^ Counsel for the Respondent : Public Prosecutor.

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> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS

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CRIMINAL APPEAL No. 707 OF 2010

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J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The two accused, who have been convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life in S.C.No. 321 of 2008 on the file of the III Additional District & Sessions Judge, Kakinada, are the appellants herein. Accused No.1 is the son of Accused No. 2. Smt. Ganta Parvathi @ Kumari (hereinafter be referred to as 'the deceased') was the wife of Accused No.1.

The prosecution, it is appropriate to notice, at the outset, has framed two charges against the accused and they read as under:

“ **FIRSTLY:** That you (A.1) on or about 6th day of March 2008 at about 3.30 A.M., at your house at Patha Kandarada Village, did commit murder by intentionally or knowingly caused the instantaneous death of your wife Ganta Parvathi @ Kumari, by hacking her with a knife suspecting her fidelity and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

SECONDLY: That A.1 Ganta Nookaraju on 6th day of March, 2008 at about 3.30 A.M., committed the offence of murder of his wife and that you (A.2) abetted your son A.1 in the commission of the offence of murder of his wife which was committed in consequence of your abetment and thereby committed an offence punishable under Section 109 and Section 302 of the Indian Penal Code and within my cognizance.”

In support of their case, the prosecution examined P.Ws.1 to 10 and marked Exs.P1 to P17 and exhibited material objects M.Os. 1 to 12.

The case of the prosecution was that on 05.03.2008, the accused have killed the wife of Accused No.1 by cutting off her throat so deeply and as a consequence of the said brutal act, she died.

P.W.1 was the local Village Revenue Officer, who has been informed about the death of the deceased by the Village Servant at about 09.30 A.M., the next day i.e. on 06.03.2008. He immediately went to the house of the accused and found the dead body there. By then, the parents of the deceased were also present in the house. An independent person (P.W.4), who is the tenant in the house of the accused, was also found there. The police started investigating, based upon the complaint lodged by the Village Revenue Officer, P.W.1, which was marked as Ex.P1. P.W.2 is the mother of the deceased. She has spoken to the factum of marriage between the deceased and Accused No.1 and as to how the marriage was performed duly observing various formalities. She has also spoken about the illegal demands made by Accused 1 and 2 towards additional dowry and as to how the deceased used to be frequently necked out of the house and as to how the deceased used to narrate her problems in her matrimonial home to her. P.W.2 has also spoken to a past event where kerosene appears to have been poured on the body of the deceased, but somehow, she could escape from the consequences that would have normally arisen from dousing with kerosene. However, P.W.2 has categorically pointed out that because of the kerosene going into her eyes, the deceased has sustained an injury to her eyes and hence, she has been got treated surgically at the Christian Medical Centre, Pithapuram. P.W.2 has also spoken about an incident, which took place six months' prior to the death of the deceased. All these things apart, P.W.2 has spoken that the deceased has joined the accused just few days prior to the fatal incident, after differences were patched up for a while. P.W.2 has set out that the tenant of the accused, Sri Nageswara Rao (P.W.4), informed her that it is Accused No.1, who attacked the deceased and thereafter, left the house. That is how P.W.2 went to the house of the accused at 09.00 A.M. on 06.03.2008. No one was present in the house of the accused. The doors were kept ajar and when she went inside, she found her

daughter, the deceased, lying dead in a pool of blood on the cot.

P.W.3 is the younger brother of the deceased. He has virtually stated the same things what P.W.2 has deposed. P.W.4 is an independent witness. He was a tenant of the house of the accused. Though this witness has turned hospital, the learned Public Prosecutor, in the course of cross-examination, has elicited from him certain vital information. P.W.4 has stated that on 05.03.2008, being a Sivarathri festival day, he left the house at about 09.00 P.M. to go to the temple, which is 3 K.Ms. away. This witness was examined under Section 164 of the Code of Criminal Procedure by the learned Judicial Magistrate of I Class, Tuni and in that statement, he has stated that on Sivarathri day, the deceased was with the accused and on the next day, she was found dead. It is thus clear from the statement of P.W.4 that the deceased was present in the house of the accused the previous day and she has spent the day in the company of the accused and by the next morning, she was found dead and gone. By virtue of this statement of P.W.4, the burden was shifted on to the shoulders of the accused to establish that they were not present in the intervening night of 05/06.03.2008 at their home. Though a feeble attempt has been made by the accused by setting up the theory that on the Sivarathri day, they were not at home on the intervening night, but went to a temple, but however, the accused could not discharge the burden lying on them in that regard.

Sri Pradyumna Kumar Reddy, learned counsel for the appellants would urge that there is no eye witness account of the prosecution. It is only by circumstantial evidence, the accused were sought to be found guilty of the charges. The learned counsel would urge that P.W.4 and his wife P.W.5 were said to be the tenants in the house of the accused. They turned hospital and they have not supported the theory propounded by the prosecution. Therefore, he would urge that it is totally unsafe to hand down conviction to the accused. It was further contended by Sri Reddy that no single witness

has spoken about the motive for the accused to commit the offence. It was further contended by Sri Pradyumna Kumar Reddy that the prosecution has set up P.W.7, a local Councillor of the Municipality before whom Accused No.1 is stated to have made an extra-judicial confessional with regard to the crime in question. The said P.W.7 has not been trusted or believed by the Court below. Therefore, it is urged that the accused should have been acquitted, instead the learned Sessions Judge has erroneously convicted them.

The learned Public Prosecutor would submit that the deceased was found dead while she was in the house of the accused. It is therefore, for the accused to establish as to how the deceased met with her end. On the other hand, by the time P.W.1, the local Village Revenue Officer went to the house of the accused, they were not found there. It is an unnatural conduct of the accused. This apart, the learned Public Prosecutor would submit that P.W.2 has clearly brought out the motive behind the offence, namely the demand for additional dowry. This apart, P.W.2 has faithfully and truthfully narrated the troubles faced by the deceased at the hands of both the accused ever since her marriage took place with Accused No.1. Therefore, there is nothing to discredit the evidence of P.W.2 and on that basis, the conviction of both the accused can be sustained.

It is hardly in doubt that the deceased has met with an unnatural death. The cause of death, as was certified in Ex.P.12 P.M. Report, was due to *hemorrhagic shock leading to cardio-respiratory arrest*. P.W.8, Civil Assistant Surgeon at the Government Hospital, Pithapuram has found the following nine external injuries on the body of the deceased:

1. A laceration vertically on the 3rd metacarpal bone. Muscle and bone are visible. Laceration extending on the left ring finger and laceration on the little finger. Red in colour.
2. A laceration on the lateral aspect of right wrist joint with superficial scratch mark extending laterally.
3. An irregular laceration on the right hand ring finger carpo-metacarpal junction 1 ½ x 1 x 1 cms. transversely

- bone is visible.
4. A laceration on the right little finger carpo-metacarpal junction transversely and another laceration of same size above it.
 5. A laceration transversely extending from left angle of the mouth to 2 x 1 cm. mucosa is also cut.
 6. A laceration on the centre of the chin transversely. Red in colour.
 7. A laceration on the right ear pinna middle.
 8. A laceration obliquely starting from 3 cms. Below and lateral to the chin running 2 cms. below the ear and extending 2 cms. below the hair lane on the right side of the neck.
 9. A laceration on the right side of the neck below the middle of the above laceration and involving the great vessels of the neck.

The following internal injury was also observed:

“ A cut on the right side of the neck as was described in the external injuries.”

Right at the stage of the Post-mortem examination, the doctor has noticed that external injury No.9 to the carotid artery, which is the major blood vessel that supplies blood to the vital organ 'brain' from the heart directly, is the one which was cut. As a consequence, there was no blood supply to the brain and the doctor has also opined that the injuries found on the body of the deceased could possibly be caused by the object, M.O.8. Therefore, the deceased died of the external injuries inflicted on her and hence, it is for the accused to establish as to who possibly could have gained access other than themselves to their house in the intervening night. P.W.4, even though has turned hostile, has categorically mentioned that the deceased was seen in the company of the accused. No doubt, P.W.4 used the expression "accused". It might reflect, in a plural sense, upon both the accused. If it is taken in a singular sense, it can refer to either of the accused, but however, going by the circumstances and for the failure of Accused No.1 to establish that he was not available in the house in the intervening night of 05/06/03.2008, the needle of suspicion has been rightly fixed on him. He was the most likely person to have stayed in

the house in the intervening night of 05/06.03.2008. The possibility of Accused No.2, his mother being not present at that hour in the home, cannot be ruled out. Sivarathri being a festival and aged person, particularly of the age of Accused 2 would prefer to spend that night in some temple or the other, to stay awake the whole night. When the charge laid against her is that she has abetted Accused No.1 to commit the crime, the burden is heavily lying on the prosecution to establish that what is that act of abetment all about that was committed by Accused No.2. No witness has supported the prosecution theory that Accused No.2 was present at the time of the offence and she has egged on Accused No.1 to get rid off the deceased by killing her. Initially, the prosecution relied upon the statements made by P.Ws.4 and 5, the tenants of the accused, that they have heard the pleadings and cries of the deceased before her death and the shoutings of both the accused, but as was already noticed by us, P.Ws.4 and 5 have not supported the prosecution case and they turned hostile. In that view of the matter, we consider that it would not be safe to rely upon the statements made by P.Ws. 4 and 5 to the police that it is Accused No.2, who abetted and egged on Accused No.1 to commit the offence. To the extent of the statement of P.W.4 that the deceased was last seen in the company of the accused, it would be reasonable and safe to conclude that the deceased was possibly last seen in the company of Accused No.1, her husband, but not necessarily in the presence of Accused No.2 as well.

In view of the genuine doubt that has been generated in our mind about the possibility of absence of Accused No.2, on the Sivarathri day at home, and in view of the statement of P.W.4 that the deceased was last seen in the company of the accused, while we have no hesitation to uphold the conviction of Accused No.1, but however, we find that Accused No.2 would be entitled for a reasonable doubt. The criticism of Sri Pradyumna Kumar Reddy that motive was not established for the offence is without any merit. P.W.2 has categorically asserted and

stood her ground during cross-examination that both the accused have harassed the deceased a great deal during her life time for securing additional dowry. Therefore, motive has been established clearly.

It is true that the criticism of Sri Pradyumna Kumar Reddy against P.W.7, before whom Accused No.1 is stated to have made an extra-judicial confession about the commission of offence by both Accused 1 and 2 is well merited. The statement of PW-7 does not inspire much confidence in our mind and we also find that the learned Sessions Judge has also not placed reliance upon the evidence of P.W.7. P.W.7 may have acted as an elderly mediator for resolving the disputes between the deceased and her husband sometime in the past. May be, P.W.7 has been informed about the harassment meted out to the deceased by both the accused, but however, it is worthy to notice that at about 10.30 A.M. on 07.03.2008, Accused No.1 is stated to have come to his house and confessed about the killing of his wife at the instigation of his mother Accused No.2. By 06.03.2008, morning itself, the entire village has come to know about the brutal murder of the deceased. In fact, P.W.2 has stated that by the time she arrived at the house of the accused, at about 09.00 A.M., villagers in good numbers have already assembled there. Such a feature is not an uncommon feature in rural areas of this country. The shock response of the villagers is bound to bring them to the house where the victim was done to death. Further, the accused were found absent from their house. Therefore, it is most unlikely that Accused Nos.1 and 2 would have stayed back in the village and the factum of his going to the house of P.W.7 in broad day light at 10.30 A.M. on 07.03.2008 would have escaped the notice of the other curious villagers. Therefore, we do not wish to place much reliance upon this piece of evidence let in. This apart, in his chief-examination recorded on 26.10.2009, P.W.7 made the following statement:

“ Accused No.1 came to me with blood stained clothes. The shirt now shown to me was on the person of Accused No.1 at the time he came to me and confessed the

offence. The lungi now shown to me was on the person of Accused No.1 when he came to me and confessed the offence.....”

The shirt spoken of by P.W.7 was marked as M.O.11, while the lungi was marked as M.O.12. It is so unbelievable that the accused would have been keeping the blood-stained clothes on his person for so long as a period of more than one whole day after the death of the deceased came to the knowledge of one and all in the village by 06.03.2008 morning itself. Therefore, the deposition of P.W.7 does not inspire confidence in our mind to place any reliance. This is the additional reason why we were not willing to subscribe to the notion that Accused No.1 has committed the offence all due to abetting of the same by his mother. Therefore, the benefit of doubt must go in favour of Accused No.2.

Since we have already pointed out supra that it is Accused No.1, who has to necessarily discharge the burden lying on him, as he was the person last seen with the deceased, as spoken to by P.W.4, and that being a most probable event, he being the husband of the deceased, who has joined him just few days prior to her death, we have no hesitation to uphold the conviction of Accused No.1 and acquit Accused No.2 by extending the benefit of doubt.

In the result, the Criminal Appeal is allowed to the extent of acquitting Appellant No.2/Accused No.2 in S.C.No. 321 of 2008 on the file of the III Additional District & Sessions Judge, Kakinada and to the extent of the conviction and sentence handed down to Appellant No.1/Accused No.1, it is upheld.

Appellant No.2/Accused No.2 shall be released forthwith, if she is not required in connection with any other case.

NOOTY RAMAMOHANA RAO, J

ANIS, J

03rd September 2015

Note: LR copy to be marked.
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