

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

CRIMINAL APPEALS No. 777 & 1644 OF 2010 & 983 OF 2011

CRL.APPEAL NO. 777 OF 2010

Between:

1. Shaik Umar @ Babu & another

... APPELLANTS

AND

1. The State of Andhra Pradesh,
Rep. by its Public Prosecutor.

...RESPONDENT

CRL.APPEAL NO. 1644 OF 2010

Between:

1. Smt. Matta Padma

... APPELLANT

AND

1. The State of Andhra Pradesh,
Rep. by its Public Prosecutor.

...RESPONDENT

CRL.APPEAL NO. 983 OF 2011

Between:

1. Smt. Matta Padma

... APPELLANT

AND

1. The State of Andhra Pradesh,
Rep. by its Public Prosecutor.

...RESPONDENT

DATE OF JUDGMENT PRONOUNCED: 02.09.2015

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

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 APPEALS No. 777 & 1644 OF 2010 & 983 OF 2011

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! Counsel for the appellants : Sri Qazi Syed Mazheruddin
Sri K. Rama Subba Rao

^ Counsel for the Respondent : Public Prosecutor (AP)

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> HEAD NOTE:

? Cases referred

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
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CRIMINAL APPEALS No. 777 & 1644 OF 2010 & 983 OF 2011

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COMMON JUDGMENT: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

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These three Appeals are preferred by Accused 1 to 3 in S.C.No. 66 of 2009 on the file of the V Additional District & Sessions Judge (Fast Track Court), Nizamabad, where they were convicted for the offences punishable under Sections 302, 201 and 120-B of the Indian Penal Code. Accused No.3 was also found guilty of the offence punishable under Section 109 of the Indian Penal Code additionally. All the accused were sentenced to undergo imprisonment for LIFE.

Criminal Appeal No. 777 of 2010 was preferred by Accused 1 and 2. Criminal Appeal No. 983 of 2011 was a State Legal Aid brief, whereas Accused No.3 has preferred Criminal Appeal No. 1644 of 2010 on her own. Hence, all the three Appeals are heard together today.

Heard Sri Qazi Syed Mazheruddin, Sri K. Rama Subba Rao and Smt. R.V. Indira Kumari, learned counsel on behalf of the appellants and the learned Public Prosecutor on behalf of the State.

The case of the prosecution is that one Smt. Lalitha Kumari (hereinafter be referred to as 'the deceased'), W/o Sri Sanjeev, who

was working as a Teacher in a government school at Armor, went missing on 19.12.2007. The husband of the deceased, Sri Sanjeev, pre-deceased her. He was also a government teacher. It appears, certain disputes arose between Sri Sanjeev and the deceased. Consequently, the deceased moved away from Sanjeev and started living separately at Armoor along with her two sons and a daughter. In the meantime, Sri Sanjeev got married a second time to Accused No.3, but however, after the death of Sri Sanjeev, certain disputes have arisen, as to the manner of sharing the benefits arising out of the death of Sri Sanjeev, between the deceased Lalitha Kumari and Accused No.3. The caste elders appear to have conducted two panchayats. They seem to have decided that the deceased should pay a sum of Rs.3,25,000/- to Accused No.3 from out of the benefits receivable due to the death of Sri Sanjeev, but however, Accused No.3 did not accept the said settlement and consequently, went out of the mediation process. Accused No.3 was living at Ankapur in the house of the deceased Sanjeev, but after she has rejected the decision of the panchayatdars, she moved out of Ankapur and started living at Lakkora Village with her mother. Hence, the deceased has moved back from Armoor to Ankapur. It is the case of the prosecution that the deceased used to go to Armoor to attend to the school using the auto of Accused No.1 and she used to be ferried back home after duty hours by Accused No.1. Since she has not returned home on 19.12.2007, the grandmother of P.W.1, who is the elder of the two sons of the deceased, intimated him that his mother has not returned home. The said son of the deceased was examined as P.W.1. He was studying M.Sc. course at Osmania University, Hyderabad. In view of the disturbing news received by him, he immediately went to the village and started making inquiries as to where his mother could have gone the previous day. In that process, P.W.1 came to know from P.W.4, Upa-Sarpanch of the village, that one Sri Ramesh informed the said P.W.4 that he has seen the deceased in the auto driven by

Accused No.1 at about 05.30 P.M. In the meantime, P.W.2 came to learn that a Bible and a diary were found by one Sri Raju and hence, P.W.2 has taken P.W.1, who, along with three other persons, went to Armoor and collected the Bible and the diary from Sri Raju. Next day, they learnt of a burnt out dead body lying at the outskirts of Ramachanderpally and that is how, they went in search of the dead body. Though most part of the body was burnt, half of the face of the body was found not burnt and hence, they could identify the body as that of the deceased. From that scene, three material objects, M.Os. 1 to 3 were also recovered. M.O.1 was the wrist watch belonging to the deceased, M.O.2 was the half burnt spectacles normally worn by the deceased and M.O.3 was a pair of slippers, which the deceased wore. However, a lunch box, by which the deceased used to carry her lunch to the school, was also found. It was marked as M.O.4. Based upon a chance finger print found on M.O.4, the police have suspected the role of Accused No.1 in committing the crime. When P.W.13, who is the Village Revenue Officer of Issapally village, was taken to the house of Accused No.1, where Accused 1 and 2 were found, Accused No.1 has made an extra-judicial confession of committing the crime with the help of Accused No.2. It is P.W.13, through whom this event was sought to be unfolded by the prosecution and that is how Accused 1 and 2 are linked up with Accused No.3 against whom the needle of suspicion was raised by P.Ws.1 and 3, son and daughter of the deceased respectively, at the very beginning.

Believing the version of P.W.13 and the recovery of M.O.4, lunch box and the chance finger prints thereon, the prosecution has connected Accused 1 to 3 to the crime and on that basis, secured conviction in the matter. Hence, these Appeals.

There are no direct witnesses to the commission of the offence. It is only circumstantial evidence, which led the prosecution to charge Accused 1 to 3 with the commission of the offences. Except P.Ws.1 and 3, the son and the daughter, both of whom were prosecuting their

higher education at Hyderabad, no one has spoken to the fact that the deceased used to get transported to Armoor every day using the auto of Accused No.1. Even if we were to believe this version that the deceased used to get ferried from Ankapur Village to her school at Armoor and back, using the auto of Accused No.1, on regular basis, the presence of the finger prints of Accused No.1 on the lunch box carried by the deceased cannot be ruled out at all. The chance of the auto driver handling the lunch box of the deceased, who was a regular traveler in his auto, is in the realm of possibility. Variety of situations can be imagined where the finger prints of Accused No.1 could be found on the lunch box. Imagine if the deceased, who is a teacher, gets alighted from the auto in a hurry forgetting to pick up the lunch box and was proceeding towards the school, the auto driver, upon noticing the lunch box having been left behind, picking it up and handing it over to the deceased is in the realm of possibility. It is such a natural event. Accused No.1, being an auto driver, who is engaged, on regular basis by the deceased, is expected to deliver the lunch box, which is left behind in the auto by mistake by the deceased. This apart, the deceased being a teacher, like any other member of the society, Accused No.1 also would have been showing lot of respect towards her and therefore, his accidentally handling or intentionally handling the lunch box of the deceased can never be ruled out. In rural areas, people tend to pick up things, which are being carried in their hand by respected people, more out of respect. It is only out of courtesy and to show due respect to the individual, the things, which he/she was carrying, are picked up by the others, but not necessarily to help the individual. Therefore, the presence of chance finger prints upon the lunch box of the deceased belonging to Accused No.1 is not such an extraordinary circumstance for linking him directly to the crime.

Realizing this difficulty, obviously, the prosecution has examined P.Ws.13, who is working as a Village Revenue Officer of Issapally Village. No where it is explained as to why P.W.13 has been

picked up by the police for his participation in detecting the crime. Issapally is not the village where the deceased was either living or going to frequently. One can understand a Village Revenue Officer of either Ankapur or Armoor being made a part of the process of investigation. This apart, the deposition of P.W.4, in his chief-examination, would reveal as if he has been led by Accused No.1 to the scene where the half-burnt body of the deceased was lying. In *juxta position*, when we examined the deposition of P.W.1, the son of the deceased, who was studying the final year M.Sc. course at Osmania University, it clearly reveals that at about 07.30 P.M. on 19.12.2007, he got a call from his grandmother about the factum of not returning home by the deceased. That is how, he left Hyderabad and went to Ankapur Village. He reached the village on 20.12.2007 at about 09.00 A.M. This is how his deposition, in chief-examination, proceeded:

“ My grandmother telephoned me at 07.30 P.M. on 19.12.2007 that my mother did not return back from school and she was kidnapped by some persons. On 20.12.2007, at 09.00 A.M., I came to my Village and I inquired in the village and we came to know that one dead body was lying at the outskirts of Munepally Village in between Ramachanderpally (V). Then we rushed to the spot and saw the dead body and the body was burnt and we identified the dead body as some of the portion of the face was not burnt and we identified the dead body belongs to my mother and I identified wrist watch of my mother. Then the police came to the place of the dead body. Then I gave complaint to the police.....”

From this statement of P.W.1, it becomes clear that the police have reached the place where the dead body was found, upon coming to know and after identification of the dead body also by P.W.1. If the police have already arrived at the scene, on 20.12.2007, as narrated by P.W.1, question of P.W.13, a Village Revenue Officer, being taken by the police to the house of Accused No.1 and then Accused No.1 leading them to the scene where the dead body was lying, is a clear case of imagination and improvement. When the dead body was

noticed by the police, there was no immediate reason to suspect the role of Accused No.1 in the crime. The needle of suspicion towards Accused No.1 would have brightened up only after the chance finger prints have been gathered on M.O.4, lunch box, and after coming to know, during the course of investigation, that the deceased used to pick up the auto of Accused No.1 on regular basis to go to her school at Armour and also come back after the duty hours. It is at that stage the occasion to collect the finger prints of Accused No.1 would arise. Therefore, the police or P.W.13 being led by Accused No.1 to the place where the dead body was lying is clearly the result of imagination. It is also therefore, clear that the extra-judicial confession allegedly made by Accused No.1 is anything but believable. The feeble story spun around Accused 1 and 2 connecting them to the crime only to please Accused No.3, is equally unbelievable. Accused No.1 is obviously a known person to the deceased, as it is brought out by P.Ws. 1 and 3 that the deceased used to hire his auto for transportation to the school and back home from Ankapur Village. It is therefore, more than appropriate for one to assume that Accused No.1 would be more loyal to a patronizing customer than to an unknown Accused No.3. This apart, Accused No.3 was known to be the second wife of the deceased husband of the deceased Lalitha Kumari and after the disputes have not been sorted out to her satisfaction by the panchayatdars, Accused No.3 has left the Village Ankapur and was living at a different Village Lakkora with her mother. Therefore, a meeting of minds between Accused Nos. 1, 2 and Accused No.3 for accomplishing the task of eliminating the deceased is a far-fetched one. No strong motive or gain was attributed to Accused 1 and 2. Even Accused No.3's conduct, when we have examined, it comes out clean. P.W.3 has categorically stated that when she was around three-year-old, her mother started living separately away from her father at Armour Village and by the time the incident occurred, she was nearly 20-year-old. It is therefore, clear that for more than 16- 17 years, the

relationship between Accused No.3 and Sri Sanjeev, the father of P.W.3, was subsisting. In fact, P.W.3, in her statement to the police, has narrated that her father Sri Sanjeev married Accused No.3 as his second wife and was living with her at Ankapur Village in his own house. She also stated that Accused No.3 and her deceased father did not have children of their own. She has also stated that after the intervention of the panchayatdars, Accused No.3 left Ankapur Village. Therefore, it follows that if Accused No.3 had the slightest of inclination to hang on to the properties of her deceased husband Sanjeev and then assert her rights somehow or the other to succeed to his estate, as per her wishes, she would not have left the Village Ankapur after the intervention of the panchayatdars. Further, she would not left the house of Sri Sanjeev at Ankapur, to be repossessed by the deceased. Villagers have known her (Accused No.3) as the second wife of Sri Sanjeev while the deceased was the first wife. Admittedly, P.Ws., in one voice, have stated that the deceased Lalitha Kumari with her three children moved away from Ankapur and started living at Armoor ever since the relationship of her deceased husband Sanjeev with Accused No.3 was known public. Therefore, Accused No.3 having lived, obviously, at Ankapur Village with Sri Sanjeev, husband of the deceased Lalitha Kumari, was trying to assert her position in her own right to be treated as the wife of the deceased Sri Sanjeev, but not any other inferior status.

We therefore, do not find any sting or substance in the theory developed by the prosecution for linking up the accused to the death of the deceased. The gaping holes left behind in the prosecution theory must necessarily lead us to the conclusion that the prosecution has failed to bring home the charges against the accused satisfactorily and beyond reasonable doubt. Hence, we have no hesitation to set aside the conviction and sentence handed down to the appellants-accused.

In the result, the Criminal Appeals are allowed. The conviction and sentence handed down to the appellants/Accused Nos. 1 to 3 in

S.C.No. 66 of 2009 by the learned V Additional District & Sessions Judge (Fast Track Court) at Nizamabad is set aside. The appellants be set at liberty forthwith, if they are not required in connection with any other crime.

We place on record our appreciation of the efforts put in by all the learned counsel including the learned Public Prosecutor in assisting us to arrive at the conclusion, which we have reached.

NOOTY RAMAMOHANA RAO, J

ANIS, J

02nd September 2015

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