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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

+ Crl. Appeal No. 776 of 2010

% Dated 07.10.2015

Gugloth Rena

....Appellant

Vs.

\$ The State of Andhra Pradesh,

Rep. by its Public Prosecutor.

....Respondents

! Counsel for the appellant : Sri P. Nagendra Reddy

^ Counsel for the Respondent : Public Prosecutor (TG)

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> HEAD NOTE:

? Cases referred

2014(3) ALT (Crl.) 534 (SC)

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

Crl. Appeal No. 776 of 2010

Between:

Gugloth Rena

....Appellant

Vs.

The State of Andhra Pradesh,

Rep. by its Public Prosecutor.

....Respondents

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DATE OF JUDGMENT PRONOUNCED: 07.10.2015

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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 Yes
marked to Law Reporters/Journals?

3. Whether Their Lordship wish to see the No
fair copy of the Judgment?

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

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CRIMINAL APPEAL No. 776 OF 2010

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

The sole accused, who has been convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and sentenced to undergo imprisonment for life and imprisonment for two years (both sentences were directed to be run concurrently) and also to pay a fine of Rs.500/- and Rs.100/- respectively in S.C. No. 190 of 2009 on the file of the Sessions Judge at Nizamabad, is the appellant herein.

Smt. Ammi (hereinafter be referred to as 'the deceased') was the mother of P.W.5, the husband of the accused. P.W.5 was stated to be working in Dubai and was remitting the money saved by him there for the purpose of meeting the domestic expenses, but however, it appears, the accused was spending the said money very liberally and in particular, for certain vices. During one of those sojourns of P.W.5 to India, the accused could not give a satisfactory explanation for the monies spent away by her. As a consequence of this conduct of the accused, P.W.5 lost confidence in her and hence, started remitting the money in the name of his mother, the deceased. That seems to have triggered constant disputes between the mother-in-law, the deceased and the daughter-in-law, the accused.

It is alleged that on 02.02.2009, very early in the morning, the accused appears to have gone to the house of P.W.1 and informed about the death of the deceased. It was also informed by the accused that the deceased committed suicide by consuming poison. P.W.1 married the daughter of the sister of the deceased and is also a resident of the same locality and his house is hardly at a distance of 10 to 15 yards from the house of the deceased/accused. That is how, P.W.1 started the ball rolling. He not only informed the police after visiting the house of the deceased and noticing the dead body but also called P.W.5, the son of the deceased and the husband of the accused. The police started investigating as to the cause of the death of the deceased and it was found on observation that the deceased has been strangled as they found a ligature mark around the neck of the deceased. Therefore, the prosecution suspected the role of the accused as she was the most naturally available person at the scene of offence during the night time. P.W.2, who is none other than the wife of P.W.1, has deposed that the children of the accused were at her house the previous day till about 09.00 P.M. watching television. At that time, the accused came to their house and picked up her children. From this conduct of the accused, it becomes inferable that the deceased has not died on 01.02.2009 till about 09.00 P.M. Thereafter, by the time of the day break i.e. by 06.00 A.M., P.W.1 was present at the house of the deceased and noticed her dead body. Therefore, it is inferable that the deceased might have been killed between 09.00 P.M. the previous night and 06.00 A.M. of the next day. When there is no other reason or factor for suspecting the role of any other third person in the commission of the offence, the prosecution suspected the role of the accused, as she was the only able-bodied person present at the house on the day of the incident. It was clearly

brought on record that excepting the children of the accused and the accused herself and the deceased, there was none else available in the house. In such circumstances, the needle of suspicion has been rightly fixed on the accused by the prosecution. When we have considered the cross-examination of P.Ws. 1, 2 and 3 as well as the Investigating Officer, there is no suggestion even left for one to think of another third person capable of gaining entry to the house of the deceased. Therefore, even as part of defence, it was not suggested that a third person possibly could have gained entry to the house. Apart from lack of such a suggestion, one other important factor that matters was, nothing was found to have been disturbed at the scene of offence. If a third person were to have gained access, in the absence of any particular reason, to do away with the life of the deceased, it can only be for gain and when nothing has been found disturbed, any factor of attempt of gain by third person gets ruled out. The only suggestion that has been left to P.W.1 in the cross-examination by the accused, in fact, ruled out the possibility of a third person coming to the said house. So far as P.W.5 is concerned, he has categorically deposed that he lost confidence in his wife because she has spent away the monies sent by him towards her vices and that was the reason why he started sending money in the name of his mother, so that there will be at least accountability for the monies spent. P.W.5 has also spoken about the telephone conversation which his deceased mother had with him informing that the accused was picking up quarrels with her as the amounts were sent by him not in her name but in the name of the deceased. P.W.5 therefore, spoken of the motive for the accused to do away with the life of the deceased. In fact, P.W.6, who is a resident of the same thanda has been examined to speak about the panchayat that was conducted nine months prior to the occurrence of the incident. The panchayat was stated to have been held with regard to the disputes between the accused and the deceased and P.W.6 was one of the elders of the said panchayat and it is, in fact, upon the advice of the caste elders the accused has returned to the matrimonial home. P.W.7 has spoken about a panchayat that was held two or three months prior to the date of the incident and the said panchayat was conducted in connection with the money matters between the accused and the deceased and he participated in that panchayat as an elder of the community. It is thus clear that the accused had been picking up quarrels with the deceased in connection with the monies sent by her husband from Dubai. P.W.10, the Civil Assistant Surgeon, who conducted the autopsy over the dead body, has noticed ante-mortem injuries and also strangulation mark around the neck extending

to 5 cm. on either side of the midline and on dissection, he found hyoid bone as fractured. He opined therefore, that the cause of death is due to 'strangulation'. In fact, no cross-examination was carried out with regard to this witness.

Sri P. Nagendra Reddy, learned counsel for the appellant would contend that in Ex.P10 seizure panchnama, the recovery of plastic rope M.O.7, which has been used for the commission of the offence, has been recorded. He would submit that two panch witnesses examined as P.Ws.9 and 11 have turned hostile and therefore, Ex.P10 seizure panchnama cannot be believed and consequently, the recovery of M.O.7 remains unexplained. In the absence of such an important event, the chain of events remains incomplete. He therefore, places heavy reliance upon the judgment rendered by the Supreme Court in ***Krishnan @ Ramaswamy v. The State of Tamilnadu***, wherein, in paragraph 21, the Supreme Court has set out as under:

“ 21. The conviction cannot be based only on circumstance of last seen together with the deceased. In ***Arjun Marik and others v. State of Bihar (1994) Supp. (2) SCC 372***, this Court held as follows:

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19.07.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and therefore, no conviction on that basis alone can be founded.”

It is therefore, contended by Sri Nagendra Reddy that the accused deserves to be acquitted.

In the instant case, the answer to the query raised is also found in the very next passage of the same judgment of the Supreme Court, upon which reliance has been placed. The Supreme Court, in paragraph 22, quoted its earlier judgment rendered in ***Bodhraj v. State of Jammu & Kashmir (2002) 8 SCC 45***, wherein it was held that 'last seen theory' comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

In the instant case, the time gap between 09.00 P.M. of the previous night and 06.00 A.M. the next day morning is so small firstly and secondly access to the house of the

deceased by any other third person in this interregnum having completely been ruled out, as noticed by us supra, the judgment rendered by the Supreme Court in ***Krishnan's case*** far from lending support to the case of the accused lends support to the theory relied upon by the prosecution namely 'last seen'.

We find no mitigating factors or circumstances existing in the case for us to arrive at a different conclusion than the one which has been arrived at by the learned Sessions Judge. Hence, we have no hesitation to dismiss this Appeal and confirm the conviction and sentence handed down by the Sessions Court.

The Criminal appeal fails and it is accordingly, dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

07th October 2015

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