

*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**
AND
HON'BLE SMT JUSTICE ANIS
+ CRIMINAL APPEAL No.693 OF 2010

% 03-09-2015

Pamusani Venkateswarlu,
S/o Pedda Sunkaiah and two others. Appellant (s)/ Accused

Vs.

\$ The State of Andhra Pradesh,
Through Public Prosecutor,
High Court of Judicature at Hyderabad. Respondent (s)

! Counsel for the Appellant (s) : Sri G.V.L. Murthy.

Counsel for the Respondent: Public Prosecutor (AP)

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> Head Note:

? Cases referred:

1. AIR 1993 SC 65
2. AIR 1993 SC 2275
3. AIR 1996 SC 1613
4. AIR 1998 SC 2726

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

This Criminal Appeal is preferred by accused Nos.1, 2 & 3 in Sessions Case No.159 of 2009 on the file of the Sessions Court, Prakasam at Ongole. They were convicted for the offences punishable Under Sections 302 & 120(B) I.P.C and each of them were sentenced to undergo imprisonment for life for both offences respectively.

2. Originally, the prosecution has been laid against five accused. However, the Sessions Court acquitted accused No.4 and accused No.5 by giving benefit of doubt to accused No.4 and for the failure of the prosecution to bring home the charge specifically against accused No.5.

3. The case of the prosecution is that accused No.3 is the wife of one Pola Nagaraju (henceforth referred to as 'the deceased'). She has been leading a life of loose morals. She has lately developed illegal intimacy with accused No.4, who was visiting the house of the deceased, in the absence of the deceased. Since the deceased was objecting the conduct and behaviour of accused No.4, it has been planned to eliminate him completely. As a part of this planned activity, accused Nos.1 & 2 took the deceased out of the house on the pretext of consuming liquor and thereafter, killed him.

4. On behalf of the prosecution, PWs.1 to 10 were examined and Exs.P1 to P12 got marked. Material objects 1 to 9, which were recovered during the course of investigation, were got marked. On behalf of the accused, one witness was examined as DW.1 and two exhibits were got marked as Exs.D1 & D2.

5. PW.1-the *de facto* complainant is none other than the son of the brother of the deceased. He is a resident of Giddalur. PW.1 has brought

out that the marriage between accused No.3 and the deceased was performed sixteen years ago and that they lived for two years at their native place Yadavalli and later, they shifted their residence to Giddalur, where they stayed for four years and thereafter, they were shifted to the village of the parents of accused No.3 viz., Chollaveedu. The calling of the deceased was to collect firewood and other wood from the nearby forest area and to sell the same. PW.1 was informed by the parents and elder brother of the deceased about the death of the deceased and that the body of the deceased was lying underneath a tamarind tree near the fields of Gudimetla Lakshamma of Chollaveedu village. That is how he left Giddalur at about 8:00 a.m on 6th April, 2009 and reached the place, where the body was lying in an hour's time. The rest of the statements made by this witness may not be really relevant for the purpose of handing down conviction to the accused. Except to the extent of conveying a fair idea, as to how accused No.3 was leading the life of loose morals, we cannot attach much significance to the testimony of this witness.

6. PW.2 is a child witness, who is the son of the deceased and accused No.3. He is the one, who has laid the foundation of unraveling as to who killed his father. Since the conviction of the accused is centered around on the testimony of this witness, we will deal with his deposition a little later on.

7. PW.3 is the neighbour of the deceased. This witness has turned hostile as he has disowned his earlier statement that he knew accused Nos.1, 2, 4 & 5. Since he is a neighbour of the deceased, he would say that he knew accused No.3 only. So far as PW.4 is concerned, he is the other neighbour, who also turned hostile. Excepting to the extent of knowing of accused No.3, he did not support the case of prosecution and same is the case with PW.5 another resident of Chollaveedu village. PW.6 is the Village Revenue Officer of Chollaveedu village. He has been

examined as he is a witness to the crime scene observation proceedings. This witness also turned hostile as half way through he departed from his earlier statement and did not support the prosecution fully. But, however, during the cross-examination by the learned Public Prosecutor, it is clearly brought out that he was present at the time of conducting scene observation proceedings and the inquest proceedings. Ex.P7 is the scene observation report, which is prepared by the Inspector of Police in his presence. He has also attested the inquest panchanama marked as Ex.P3. Further, the panchanama, which was prepared on 21st April, 2009 at about 7:00 a.m near Anumanapali Junction, was also conducted in his presence. It is during these proceedings, accused Nos.1 & 2 showed them the stones, which they used for commission of the offence and which they concealed. That is how, Ex.P9 the extra judicial confession and also discovery mahazar of stones have been spoken to by this witness.

8. PW.7 is the local Gram Panchayat Secretary. He is also a witness for the inquest panchanama and the seizure mahazarnama marked as Exs.P8 & P9 respectively. Though this witness also started deviating from his earlier statement, however, during the course of cross-examination by the learned Public Prosecutor, relevant information has been extracted from this witness. PW.8 is the Civil Assistant Surgeon, working at Government Hospital, Giddalur, who conducted autopsy from 05:15 p.m to 06:00 p.m. The following six external injuries have been noticed by PW.8 on the deceased:

1. Contusion injury below left ear 3 X 1 inch.
2. Contusion injury at right ear 3 X 1 inch.
3. Contusion injury chest wall.
4. Contusion injury at neck left side.
5. Swelling and contusion of scrotum.
6. Injury of scalp about left ear.

Further, the following two internal injuries were also noticed by

him.

1. Fracture of skull at temporal parietal region with defuse clot of blood, at temporal parietal region of skull and brain.
2. Chest large hematoma of chest wall.
Lungs contain reddish black fluid coming from the lungs due to haemorrhage.

PW.8 has opined that the injuries found on the body of the deceased are sufficient to cause the death of any human being in the ordinary course. He is the one who gave Ex.P10-postmortem examination report. In the said report, he has opined the cause of death of the deceased as due to multiple injuries and fracture to the skull bone. PW.8 has noted haemorrhage in the brain and internal haemorrhage in the lungs, which may have caused the death. PW.9 is the Investigating Officer, while PW.10 is the Sub Inspector of Police who registered the complaint lodged by PW.1 marked as Ex.P1. Thus, the prosecution could prove that the deceased has suffered severe multiple wounds both external and internal and as a result of which, he died.

9. There remains two crucial questions, which need to be answered. They are (i) what would be the motive for the commission of offence and (ii) who has perpetrated the crime. The answers to both these questions have been furnished by PW.2. PW.2 was studying 6th class, when he was examined by the Court on 21st January 2010. It is he, who was present at home at around 7:30 p.m on 5th April, 2009, when accused Nos.1 & 2 approached his deceased father for the purpose of purchasing certain wood material for manufacturing of a cot from the deceased. PW.2 has deposed that accused Nos.1 & 2 paid Rs.200/- to the deceased and purchased some material from him. It is thereafter, accused Nos.1 & 2 invited the deceased to come out on the pretext of taking liquor. It is PW.2, who stated that he also wanted to accompany his father. But, however, it is accused Nos.1 & 2, who dissuaded him from accompanying his father. The conduct of accused Nos.1 & 2 in this

regard perhaps may pass off as not objectionable since PW.2 is hardly eleven year old when they were asking the deceased to accompany them for consuming liquor. It is but natural of them to dissuade the child to accompany for such a purpose. We may not attribute serious motive to that act of accused Nos.1 & 2. But, however, PW.2 has deposed that few minutes prior to the visit of accused Nos.1 & 2 to their home on the pretext of purchasing certain wood material from the deceased, A.3-the mother of PW.2 and the wife of the deceased took her younger son with her and went out of the house on the pretext of fetching water. PW.2 has categorically stated that as by the time when accused Nos.1 & 2 finished their sale transactions with the deceased and suggested the deceased to come along with them for consuming liquor, A.3 was not at home. PW.2 has also stated that because accused Nos.1 & 2 have dissuaded PW.2 from accompanying his father, he stayed back home alone and after a while thereafter, he fell asleep. He has categorically stated that A.3-his mother has not returned home in the night. This part of the conduct of A.3 was totally unnatural. No woman, who goes out for fetching water, would fail to return home the whole night. It is the neighbours, who woke him up next day in the morning and informed him that his father has been killed and his dead body was lying under a tamarind tree near the fields of Gudimetla Lakshamma and that is how he rushed to the place, where his father's dead body was lying and he found the body lying there with injuries. He also stated that his mother was not present at the place, where the dead body of his father was lying. Thus, implying that A.3 has not returned home even on the next day morning after she left the house of the deceased prior to 7:00 p.m in the previous night. That was the reason why she was suspected. Most significantly PW.2 has identified both accused Nos.1 & 2 with their names and he has asserted that he knew them even from an earlier point of time. When the Court tried to find out as to how cordial the relationship between accused No.3 and the deceased used to be, PW.2 has categorically deposed that they were

quarrelling with each other often times. PW.2 has also categorically stated that accused No.4 was visiting their house in the absence of the deceased and accused Nos.3 & 4 were seen sleeping on the same cot in a very proximate position to each other. He has also pointed out that accused No.4 on such occasions used to send him out on the pretext of fetching him cigarettes or liquor and on one such occasion, when he declined to go out, he hit him with a glass causing an injury over his nose. Before the learned Sessions Judge, PW.2 has pointed out to the injury sustained by him above his nose. PW.2 has categorically stated that accused Nos.3 & 4 were having illicit relationship between them and that was the factor for the quarrels between the deceased and accused No.3. Accused No.3, in fact, though examined DW.1 and also marked Exs.D1 & D2, which relate to some other crime, which she has initiated against a third party offender, has not brought out any material to justify her absence at home or discredit what all PW.2 has stated.

10. We are conscious that PW.2 is a fairly young person of eleven years age and at that age one can be easily influenced and tutored. Therefore, the Courts have been applying a very careful standard while making an assessment of quality of evidence tendered by a child witness. The legal principles on the subject have been crystallized by the Supreme Court in ***Prakash v. State of Madhya Pradesh***^[1], ***Baby Kandayanathil v. State of Kerala***^[2], ***Raja Ram Yadav v. State of Bihar***^[3] and also in ***Panchhi and others v. State of U.P.***^[4]. As a rule of prudence, Courts have been looking for appropriate corroboration of the statement of a child witness. In a case, where there is no eye witness available, it is the circumstance that possibly supply links connecting the accused to the crime. Such material is what is relied upon and taken into account by the Court. In the instant case, PW.2 was the only one, who was available at home other than the deceased when

accused Nos.1 & 2 came to their house for the purpose of purchasing some wood material from the deceased. Therefore, other than PW.2, no one could have been a witness either to the presence of accused Nos.1 & 2 at the house of the deceased around 7:30 p.m on 5th April, 2009 and also to the other fact that it is accused Nos.1 & 2, who invited the deceased to come out to have liquor with them. Further, since there was none at home, PW.2 wanted to accompany his father. But, it is accused Nos.1 & 2, who have dissuaded him in that regard. Therefore, PW.2 has actively participated in the events that preceded immediately before the departure of the deceased from the home on 5th April, 2009. As was observed already by us above, even otherwise the accused Nos. 1 & 2 would have dissuaded PW.2 from accompanying the deceased as the ostensible purpose of theirs is to take deceased from out of their home and the purpose was stated to be for consumption of liquor. Hence, presence of a tender aged child at such a place is an unwelcome one. That is the reason why, PW.2 stayed back alone at home. Though this witness has been cross-examined, he stuck to the main plank of the theory of the prosecution, which is otherwise called 'last seen' has been built up. PW.2 could not be dislodged from his statement that it is accused Nos.1 & 2, who have taken the deceased from out of his home on the pretext of consuming alcohol elsewhere. Accused No.3 was not present at the house. On the pretext of fetching water, she left the house. A little while later, accused Nos.1 & 2 arrived at their home. Therefore, excepting PW.2, no one would have seen his father in the company of accused Nos.1 & 2, when he was known to be alive. Therefore, through PW.2's testimony, the prosecution could establish the fact that it is accused Nos.1 & 2 after finishing their business deal with the deceased, took the deceased from out of his home on the pretext of consuming alcohol. At about 7:30 p.m, possibly, the neighbourhood would normally be busy attending to their own important personal work such as either cooking food or consuming it. It is not unusual for the

people of rural areas consuming food a little early in the evening around 7:30 or 8:00 p.m. In those set of circumstances, excepting PW.3, no one would have either seen or spoken to accused Nos.1 & 2. Accused Nos.1 & 2 have failed to discharge the burden lying on them that they left the company of the deceased while he was alive as they have never disputed the statement of PW.2 that they were present at the house of the deceased for purchasing some wood pieces on 5th April, 2009. No material was also brought forth by them to discredit the testimony of PW.2 that it is accused Nos.1 & 2, who have taken the deceased on the pretext of consuming alcohol. We are, therefore, satisfied that the evidence of PW.2 inspires confidence.

11. There is also another circumstance against the theory of any tutoring or influencing of PW.2. Even assuming that some one tried to tutor him or influence him, against natural love and affection one would have towards one's own mother, he would have easily warded off any such influence in his mind. Otn the contrary, PW.2 has spoken to about all the bad ways of life led by accused No.3 in the company of accused No.4. The impression, thus, he gained about accused No.3 remained imprinted on his mind. Further, he was also traumatized by accused No.4 and the witness has not forgotten the same because of the injury sustained by him above his nose. That was the reason why, he was consistently maintaining that his father was done to death all due to the misconduct exhibited by his mother accused No.3. We, therefore, have no hesitation to hold that PW.2 is frank and forthright in his statement and was also truthful.

12. However, the learned counsel for the appellant would submit that PW.2 has made the following statement before the Court:

“My father was killed by the accused persons 1 to 5 herein as A.4-Ranga Swamy was having illicit relationship with my mother and my father was

objecting and thereby his elimination helps as no one else comes in their way.”

This statement, according to the learned counsel, is so obvious a result of tutoring and influencing of PW.2. According to the learned counsel, when PW.2 was not an eye witness to the crime, he couldn't have imagined of all five persons as responsible for the death of his father, particularly, when he has not noticed A.4 & A.5 on the date of incident at his home. However, the bad ways of life led by his mother has been spoken to by PW.2. He has specifically spoken about improper relationship between accused Nos.3 & 4, which he himself has seen. Therefore, the statement, which the learned counsel for the appellants tried to rely upon would not have been the result of influencing or tutoring or due to any other influencing factors in the mind of PW.2.

13. As we have carefully analyzed the evidence of PW.2 and the evidence of PW.8 has clearly brought out as to the causative factors of the death of the deceased and in view of the fact that accused Nos.1 & 2 are the two persons, who have been seen last in the company of the deceased, when he was alive and in view of the fact that accused Nos.1 & 2 have not discharged the burden lying on them to explain at what point of time and where they parted with the company of the deceased, conviction handed down to accused Nos.1 & 2 does not require or warrant any interference at our hands.

14. However, the learned Sessions Judge has extended benefit of doubt to accused No.4 and acquitted him. Thus, accused No.4, who is the chief amongst the accused, who wished the most to do away with the deceased, was the one who was having an undesirable relationship with accused No.3 and once accused No.4 is acquitted, the Sessions Court should have looked for any other strong circumstance, which could have possibly linked accused No.3 to accused Nos.1 & 2. Unfortunately, there was no material that was brought on record to establish any

possible link between accused Nos.1 & 2 and accused No.3. Two strong circumstances obviously weighed with the Sessions Court for convicting accused No.3. They are (i) her absence at the house of the deceased prior to the arrival of accused Nos.1 & 2 there and thereafter remaining away from the home and (ii) her not visiting the place, where the dead body of her husband was lying. There is no material that was brought on record to establish that she has visited the place, where the dead body of her husband was lying. On the contrary, PW.2 has asserted that she was not present at home, when early in the morning, his neighbour woke him up and told him about the dead body of his father lying near the agricultural fields of Gudimetla Lakshamma. This conduct of accused No.3 was completely unnatural and gives scope for suspicion of her involvement in the crime. But the rule of prudence consistently followed by the Courts is that however, much strong is the suspicion, it was no substitute for proof. We are therefore, constrained to extend the benefit of doubt towards accused No.3 as accused No.4 has already been acquitted by the Sessions Court. It could have been a different matter if accused No.4 was convicted by the Sessions Court and in the absence of any appeal preferred by the State against the acquittal of accused No.4, the same benefit of doubt is warranted to be extended to accused No.3 also. Accordingly, while confirming the conviction and sentence passed against accused Nos.1 & 2, we acquit accused No.3 for want of proof beyond reasonable doubt of her involvement in the crime.

15. Thus, in view of the above discussion, the Criminal Appeal is partly allowed setting aside the conviction and sentence recorded by the trial Court against the third appellant/accused No.3 in its judgment, dated 19.04.2010, in Sessions Case No.159 of 2009 on the file of the Sessions Judge, Ongole for the offences punishable under Sections 302 & 120(B) I.P.C. and she is, accordingly, acquitted of the said offences and set at liberty. She shall be released forthwith if she is not required in any other

case. Fine amount, if any, paid by her shall be refunded to her. The conviction and sentence imposed by the trial Court against appellants/accused Nos.1 & 2 is confirmed.

Miscellaneous petitions, pending if any in this criminal appeal shall stand closed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

Date: 03.09.2015

Note:

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[\[1\]](#) AIR 1993 SC 65

[\[2\]](#) AIR 1993 SC 2275

[\[3\]](#) AIR 1996 SC 1613

[\[4\]](#) AIR 1998 SC 2726