

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

-

CRIMINAL APPEAL NO. 719 OF 2010

-

Between:

Setti Chinnaiah, aged 35 years, S/o Mariyamma, Mala, N/o Kota
Nemalipuri

....Appellant/Accused.

VS.

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

...RESPONDENT/Complainant

DATE OF JUDGEMENT PRONOUNCED: 02-09-2015

-
SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE SMT JUSTICE ANIS

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

-

-

-

***HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
HON'BLE SMT JUSTICE ANIS
+CRIMINAL APPEAL NO. 719 OF 2010**

%02.04.2003

#Setti Chinnaiah, aged 35 years, S/o Mariyamma, Mala, N/o Kota
Nemalipuri

....Appellant/Accused.

VS.

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

...RESPONDENT/Complainant

!COUNSEL FOR THE APPELLANT : NONE APPEARS
COUNSEL FOR THE RESPONDENT : PUBLIC PROSUECTOR

<Gist :

>Head Note:

? Cases referred:

1. 2014 (4) ALD 1 (DB)
2. 2004 (1) ALD 18 (SC) = AIR 2003 SC 4548
3. AIR 1982 BOMBAY 72
4. AIR 1970 SC 833
5. AIR 1967 AP 257
6. 1993(3) ALT 21
7. (2008) 15 SCC 673
8. AIR 1958 SC 706

9. AIR 1969 AP 242 (V.56 C 76)
10. AIR 2011 SC 2906
11. AIR 1988 SC 881
12. AIR 1976 SC 807
13. 2015 (2) ALD 331
14. 1995 SUPP (2) SCC 428
15. 2007 (1) ALT 253
16. AIR 2012 SC 1727
17. AIR 1934 PC 23
18. AIR 1964 SC 1254
19. (1995)

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE SMT JUSTICE ANIS

CRIMINAL APPEAL NO. 719 OF 2010

-

J U D G M E N T :

This appeal is preferred by the sole accused in Sessions Case No. 265 of 2009 who has been convicted for the offence under Section 302 IPC and sentenced to undergo imprisonment for life.

2. It is rather unfortunate that the legal aid briefs entrusted to the learned counsel on the panel are not prosecuted carefully and diligently. When this appeal was taken up on 3rd June, 16th June and 23rd June, 2015, the Court adjourned the case and again on 27.8.2015 this Bench has taken up the hearing of this appeal and upon noticing that the learned panel advocate of the legal aid is not present, we directed the Member

Secretary, Andhra Pradesh State Legal Services Authority to remind the learned counsel to be present next week when the matter will be taken up for hearing.

3. Accordingly, the Member Secretary, Andhra Pradesh State Legal Services Authority appears to have reminded Smt Manjula Kumari, Advocate that the case is posted to 2.9.2015 and that she should appear in the matter. A report to this effect was made available by the Member Secretary through his communication dated 28.8.2015. Sadly, the learned panel advocate has not bothered to make her appearance. We are, therefore, left with no option except to go through the paper book and hear the learned Public Prosecutor.

4. The charge laid against the accused by the State is sought to be brought home by setting forth that the deceased was none other than the second wife of the accused. They had three children from out of their 11 year old marriage. But nonetheless the accused was suspecting the fidelity of the deceased. On the day of incident, i.e., on 6.11.2008 as is her normal wont, the deceased appears to have got up early and went to a nearby rivulet known as 'Isukavogu' to wash the linen. PW-3 and LW-5 who are also the residents of the village were also in the same habit. It is PW-3 and LW-5 who have noticed the accused getting hold of the neck of the deceased and trying to drown her in the waters of rivulet. On seeing this horrific incident, PW-3 and LW-5 let out

loud cries with a view to scare away the accused. Thereupon, the accused appears to have let go his hold on the neck of the deceased and bolted away from the scene of offence. Since PW-3 and LW-5 are stated to be on the opposite side of the bank, they both went inside the village and got PW-1 and others from the village. PW-1 was the father of the deceased. It is PW-1 with the help of PW-4 and others, who searched for the dead body and brought it out to the bank. Thus the prosecution relied heavily upon the testimony of PW-3, who is an eyewitness to the incident.

5. For the purpose of satisfying ourselves that PW-3 has really witnessed the incident, and that she was not planted by the prosecution, we have carefully scanned and analyzed the deposition of PW-3. She has stated that she is the resident of Yarrabalem Village and that she was doing coolie work. She knew the deceased Sowramma and her husband, the accused. She has deposed that in the morning hours, a little earlier to 6.00 AM, when herself and LW-5 went to the same 'Isakavogu' for washing their clothes so did come the deceased there for the same purpose. Then she made the following statement ".....I saw the accused drowning the deceased into the water by catching hold of her neck. LW-5 also witnessed the occurrence and myself and LW-5 cries and on hearing our cries accused left the deceased and went away. Then both of us went to PW-1

and informed him. Again myself and LW-5 and PW-1 came to the scene of offence along with other villagers and found the deceased Sowramma. LW-6 and other villagers brought the dead body to the bank and laid the dead body on a cot.....". The presence of PW-3 and LW-5 near the rivulet at that hour is neither an unnatural or unbelievable phenomenon. Women folk in villages attempt to wash the clothes quite early in the morning so that the water would not only be fresh at that hour but also they can complete the task before much time lapses after sunrise and they can catch up with the rest of their activities such as preparation of food or going for the coolie work. Normally, the coolies will be reporting to work around 8.00 a.m. Therefore, presence of the deceased, PW-3 and LW-5 at around 6.00 a.m near the rivulet was not an unnatural event. But however, we had entertained a doubt as to whether PW-3 and LW-5 who have witnessed the accused getting hold of the deceased and making her drown in the water would have failed to go to her rescue at least as soon as the accused gone away from the scene of offence. Normally, a person who raised an alarm upon seeing a ghastly event as that of a murder, would have normally rushed to rescue the victim, at any rate as soon as the frightened accused left the scene of offence. In the instant case, PW-3 has not stated that she has rushed to the help of the victim upon seeing her getting drowned. That is where the learned Public

Prosecutor helped us understand the circumstances as to how this offence has occurred. It was brought on record that at the place where from the body of the deceased was retrieved by PW-1 and PW-4 and others the depth of waters was nearly 6 feet. Therefore, it is not a case where waters in the Vogu or rivulet are having superficial depth but are having fairly deep waters. That is the reason why PW-3 and LW-5 could have hesitated to rush to the spot where the deceased got drowned. Obviously, PW-3 and LW-5 for that matter may not be knowing swimming and hence did not venture rushing to the help of the victim as that could in fact be risky for themselves as well. This apart, from Ex.P-13, the rough sketch of the scene of offence, we could notice that PW-3 and LW-5 are nearly 150 to 200 feet away from the place where the offence was committed. Any attempt by PW-3 and LW-5 to cross over the Vogu though it is only 150 feet wide was fraught with risk and danger. That explains the conduct of PW-3 and LW-5 as to why they preferred to rush back to the village and informed PW-1 as to what had happened. In fact, the Civil Assistant Surgeon who has been examined as PW-9 has categorically supported that the deceased died due to Asphyxia followed by cardio respiratory failure and that is the reason why the Postmortem report marked as Ex. P-9 and the opinion of the Regional Forensic Science Laboratory marked as Ex.P-10 and the final opinion marked as Ex. P-11 have

squarely supported the case of the prosecution.

6. In view of the consistency about the incident spoken to by PW-3 and supported by PW-1, there is nothing for us to suspect that it is not the accused-appellant, who had committed the offence and we have therefore no hesitation to uphold his conviction and sentence.

7. Accordingly, this appeal fails.

8. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

9. We direct the Andhra Pradesh State Legal Services Authority as well as Telangana State Legal Services Authority and the High Court Legal Services Authority not to entrust any more legal aid briefs to Smt. Manjula Kumari, Advocate.

NOOTY RAMAMOHANA

RAO, J

ANIS, J

Date: 02.09.2015

KA

