

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

AND

*** THE HON'BLE MRS. JUSTICE ANIS**

+ CRIMINAL APPEAL No.739 of 2010

% 09.09.2015

Erwade Shivaji

....Appellant

v.

\$ State of A.P.,

Rep. by Public Prosecutor,

High Court, Hyderabad.

.... Respondent

! Counsel for the Appellant : Sri S.Surender Reddy

Counsel for Respondent: The Public Prosecutor (TG)

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>Head Note:

? Cases referred:

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AND

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

The sole accused in S.C.No.536 of 2009, who has been convicted by the learned Principal Sessions Judge, Adilabad for having killed his wife and sentenced to undergo rigorous imprisonment for life, was the appellant in this appeal.

Heard Sri S.Surender Reddy, learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

The theory set up by the prosecution is that the accused and his wife were eking out their livelihood by attending to coolie work in a brick-kiln operated in the fields

belonging to the husband of P.W.2 and the father of P.W.1. On 23.04.2009 at about 10.00 p.m. the deceased and her husband, the accused with their 2-year old daughter came to the house of P.W.2 and wanted to sleep there instead of going back to their hut. Therefore, P.W.2, as she knew the accused and his wife who were working in the brick-kiln of her husband, given them shelter and also provided them food. When the deceased and accused wanted to sleep in the night there, she also provided a mat for them to sleep on. Thereafter, P.Ws.1 and 2 and two of the neighbours of P.W.2 and also her daughter went upstairs to sleep. Nearly, after an hour's time, they heard a big noise and then they rushed back to the ground floor. P.W.2 and others have seen the accused in the act of hitting his wife with a boulder in his hand and by then the deceased was struggling for her life as she suffered a bleeding head injury. It is P.W.1, who questioned the accused for his actions and the accused seem to have bitterly stated that since the deceased was having an extra matrimonial relationship with her relative, he decided to kill her. The panic stricken P.W.2 sent away P.W.1 to fetch an elderly male member of the family, a relative of her husband. That is how P.W.4 came to the house of P.W.2 in the night and immediately called up for the ambulance as the deceased was found struggling for her life and with a view to save her the ambulance was called. The ambulance appears to have arrived at in the village around 11.00 p.m. It is the case of the prosecution that the staff of the ambulance declared the deceased to have succumbed to the injuries by then and died. It is also the case of the prosecution that after the incident was noticed by P.Ws.1, 2 and 3, the accused fled away from the scene of offence and also carried away with him the boulder, which he has employed for commissioning the offence.

Sri S.Surender Reddy, learned counsel for the appellant/accused would urge that no witness has ever spoken of the actual act of the accused killing his wife nor about the motive for the accused to have killed his own wife. This apart, even by the version of P.Ws.1 and 2, the accused has taken Rs.500/- from the husband of P.W.2 and the father of P.W.1 in the morning on that day as he was not feeling well and he wanted to go to Nirmal for undergoing a medical examination. Therefore, there was no motive or necessity for the accused to have killed his own wife particularly when they are sleeping in the house of the Master, the husband of P.W.2. Further, Sri S.Surender Reddy, learned counsel for the appellant/accused would strenuously contend that there are apparent contradictions between the statements made by P.W.5, father of the deceased and P.W.7, an independent witness, who has been

planted by the police as if it is before P.W.7 the accused has confessed about the commission of offence. Learned counsel for the appellant/accused has pointed out that P.W.5, in his deposition has stated that he received phone message at about 02.00 a.m. in the night about the death of his daughter. Therefore, he, his wife and others came to the village, where their daughter died, by about 08.00 a.m. in the morning. He has also stated that by the time he visited the scene of offence, the stone (boulder) used for committing the offence was lying besides the dead body of his daughter. Whereas P.W.7, a resident of the village, has deposed that it is the next day, the police have sent word for him and also another individual by name Veeramalla Nadipi Poshetty,

S/o Narsimulu to act as Panchas and hence they assembled near the place, where the hut of the accused was lying at the outskirts of the village at about 18.15 hours on 24.04.2009 and it is before these panchas the accused first confessed to the crime and then he also volunteered to produce the boulder used by him for committing the offence. It is the statement of P.W.7 that the accused has produced the boulder, which he has hidden away by wrapping some clothes around it in his hut and he has produced the said boulder which contained blood marks and thereafter the police have seized it and affixed their signed paper to the said boulder, evidencing its seizure.

Sri S.Surender Reddy, Learned counsel for the appellant, would submit that the accused hails from the neighbouring State of Maharashtra and he does not know Telugu language, which is spoken to locally in and around Nirmal, Adilabad District. P.W.7 has spoken to the fact that he does not know Hindi language. Therefore, the evidence of P.W.7 cannot be trusted at all.

It is true that two contradictory statements are made by P.W.5 and P.W.7. While P.W.5, the father of the deceased, has categorically stated as under:

“The stone was lying beside the body when I went there.”

Whereas PW.7 has stated as under:

“The accused confessed before us about the crime and committed the murder of his wife because of the illicit intimacy with Sunder Singh. He brought the stone from his hut. M.O.7 is the stone recovered by the police at the instance of the accused under a cover panchanamma Ex.P.5.....”

The contradiction which the learned counsel for the appellant has pointed out would certainly create a doubt in our mind as to whether the boulder, M.O.7 has been recovered in the presence of P.W.7 and another person on the next day, i.e. 24.04.2009 at about 18.15 hours at the hut of the accused, which is lying at the outskirts of the village, where the brick-kiln is established. It is more probable that the boulder may have been found lying besides the dead body of the deceased, as spoken to by P.W.5. In view of this apparent contradiction, we may not believe the recovery of M.O.7 and hence we may not trust Ex.P.5 panchanama as a truthful or faithful one. Consequently, we may not also attach any significance to the deposition of P.W.7 about the confession allegedly made by the accused to him and another person on 24.04.2009, the next day of the incident.

However, when we have perused the evidence of P.Ws.1, 2 and 3, it has clearly emerged that they have spoken of the factum of the deceased and the accused coming to the house of P.W.2 together in the night. It is in fact P.W.2, who served them some food and when they wanted to sleep in the house, it is she who provided a mat to sleep on. Therefore, P.Ws.1, 2 and 3 have seen the deceased alive last in the company of the accused at around 10.00 a.m. and it is such a natural event in as much as the accused is no other than the husband of the deceased. This apart, P.Ws.1, 2 and 3 have gone upstairs for sleeping leaving the accused and the deceased and their 2-year old daughter on the ground floor. Therefore, very rightly the prosecution laid the needle of the suspicion on the head of the accused in whose company the deceased was seen alive last. No attempt has been made to discharge this burden.

Most astonishing suggestions have been left to P.W.1 during the cross-examination on behalf of the accused. P.W.1 is a 17-year old son of P.W.2 and it is P.W.2's husband who has provided the necessary employment to the accused and the deceased in his brick-kiln. That is how both P.Ws.1 and 2 know about the deceased as well as the accused. They know them as wife and husband. But still a suggestion has been left behind to P.W.1 that there was none at his home on the day of the incident and to extricate himself, P.W.1 was falsely implicating the accused. A 17-year old person would have got unnerved by that kind of suggestion left when he was in the box. The defence made an attempt to plant a suspicion that possibility, it is P.W.1 who may be responsible for causing the death of the deceased. This suggestion proceeds on the premise that the accused was not there at the time of

the death of his wife. Then the burden lies on him as to how his wife was found in the house of P.W.2, which is far away from their hut and that at 10.00 p.m. in the night. This attempt on the part of the defence to shake the confidence of P.W.1 is not to be appreciated at all. The same theory of the likelihood of involvement of P.W.1 in the crime has not been pursued any further, when the other witnesses were in the box.

P.W.1 has been examined on 27.01.2010 by the Sessions Court and on the same day P.Ws.2, 3 and 4 were also examined, when it came to the cross-examination of P.Ws.2, 3 and 4 no such suggestion was left that on the day of the incident in the house of P.W.2, there is none available in the night excepting P.W.1. Therefore, an attempt has been made by the defence to implicate P.W.1 in the crime as he happened to be the son of the Master of the accused, who has engaged him as a coolie in his brick-kiln.

When P.W.5 was in the box the defence has completely aborted the earlier theory proposed to be propounded by it about the possible involvement of P.W.1 in the crime by suggesting to P.W.5 that it is possibly Sunder Singh, the nephew of P.W.5, who has caused the offence. Thus, the defence was groping in the dark without there being a clear picture of defence of the charge.

P.W.2 and P.W.3 who is an independent person and neighbour to P.W.2 have categorically stated that by the time they rushed to the ground floor from the 1st floor upon hearing noise, they have seen the accused and the deceased and the deceased was lying in a pool of blood struggling for her life. It is in those circumstances, P.W.2 sent P.W.1 for fetching an elderly male member of theirs, who is a relative of her husband. That is how P.W.4 has been fetched to the house of P.W.2. P.W.4, when he came to the house of P.W.2, noticed the deceased struggling for life and with a view to save her, he called for the ambulance and the ambulance arrived around at 11.00 p.m. in the night and it is the staff who came along with the ambulance declared the deceased to have succumbed to the injuries and died by then and hence she has not been shifted to any hospital for medical aid, so that police will take over the rest of the action.

P.W.2 immediately sent word for her husband and he came back to the village

around 6.00 a.m. and that is how P.W.1 went to the police station and lodged a complaint in writing, which was recorded as Ex.P.1, FIR by P.W.8 at 08.15 a.m.

There is nothing unnatural in this process in as much as P.W.2 and P.W.3 apart from P.W.1 have not wasted any time though they also suffered certain element of shock for the incident that has taken place at their house in the late night. Therefore, they would not have rushed to the police station at the dead of the night and they would have only waited for the husband of P.W.2 to arrive in the village and as soon as the husband of P.W.2 arrived, the matter was reported to the police without any further delay.

The Civil Assistant Surgeon attached to the Area hospital, Nirmal, who has been examined as P.W.9 as he conducted postmortem examination at 12.30 p.m. on 24.04.2009 found the following ante mortem injuries on the body of the deceased:

1. Laceration of 8 x 2 cm with fracture of the bone over the left parietal region.
2. Multiple laceration 4 in number 2 x 1 cm over the left parietal bone.
3. Laceration cut injury of the left ear lobe 2 x 2 cm.
4. Black eye of the right eye.
5. Crush injury of the left parietal bone with Hemorrhage and clots seen in the brain tissue.
6. Tongue protruded and froth.

P.W.9 has opined that the cause of death is due to crush injury of the brain tissue and cerebral hemorrhage, it is he who issued Ex.P.7 postmortem examination report.

The prosecution has brought home the charge laid against the accused by examining P.Ws.1 and 2 and an independent witness, P.W.3. All the 3 witnesses have spoken to the reason for committing the offence by the accused is that the deceased is allegedly having an extra marital relationship with her aunt's son by name Sunder Singh.

Therefore, the charge has been brought home successfully by the prosecution and we are convinced notwithstanding the contradictions with regard to recovery of M.O.7 in view of the divergent statements made by P.Ws.5 and 7, but yet in view of near eyewitness account as narrated by P.Ws.1, 2 and 3 we find no merit in this appeal.

Accordingly, the criminal appeal is dismissed.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

09.09.2015

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

CRIMINAL APPEAL NO.739 OF 2010

Between:

Erwade Shivaji

... Appellant.

And

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

... Respondents.

JUDGMENT PRONOUNCED ON : 09th September 2015

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 Ladyship/Lordship wish to see the fair copy of the Judgment? YES