

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

CRIMINAL APPEAL No. 208 OF 2010

Between:

Payam Rajulu,
S/o Ramulu,
R/o. Nallakunta Village, Kukunoor Mandal,
Khammam District.

....Appellant

Vs.

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

....Respondent

DATE OF JUDGMENT PRONOUNCED: 09.09.2015

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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 Lordship wish to see the
fair copy of the Judgment? No

· **THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE SMT JUSTICE ANIS**

+ CRIMINAL APPEAL No. 208 of 2010

% Dated 09.09.2015

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! Counsel for the Appellant : c. Vasundhara Reddy

^ Counsel for the Respondent : Public Prosecutor (Telangana)

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? Cases referred

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AND
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CRIMINAL APPEAL No.208 of 2010

J U D G M E N T:

(per Hon'ble Sri Justice Nooty Ramamohana Rao)

The sole accused, who is none other than the husband of the deceased and who is convicted for the offence of murdering her and sentenced to undergo rigorous imprisonment for life, is the appellant herein.

To establish the prosecution story, PWs 1 to 14 were examined and Exs.P-1 to P-9 were got marked. Three MOs, out of which MO-1 is the knife, which is allegedly used for committing the offence, were seized and got marked.

Ms. Vasundara Reddy, learned counsel for the sole appellant, would submit that the prosecution has failed to establish with credible material that it is the appellant, who has committed the offence. She would further contend that the alleged presence of PWs 1 to 3 at such an early hour, ie at 5-00 AM, itself is an unnatural event. To cap it, the confession said to have been made by the accused to PW-1, who is none other than the brother of the deceased, was far more unnatural. This apart, there is any amount of improvements made by the prosecution, including the improvements from that of the complaint, which was registered as the First Information Report and marked as Ex.P-1.

The case of the prosecution was that, the accused killed his wife using MO-1 knife and when PWs 1 to 3 were at the Kirana Shop, which is just two houses away from the house of the accused, around 5-00 AM, the accused appeared and made a statement that he has killed his wife and then ran away therefrom. PW-1 along with

PWs 2 to 4 rushed to the house of the accused and found the deceased lying in supine position in a pool of blood on her cot. She was dead by then. Hence, PW-1 went to the house of the Sarpanch, narrated the event and then proceeded to the Police Station to lodge a complaint. In his complaint, it was stated by him that just about ten days prior to the incident, the elder sister of PW-1 and the deceased by name Smt. Sheelam Venkamma, reprimanded the accused for his unreasonable and intolerable behaviour of suspecting the character of his wife. Therefore, PW-1 has specifically alleged in his complaint that it is the accused, who killed his sister, the deceased. The learned counsel for the appellant Ms. Vasundara would submit that in the course of cross-examination, PW-1 has made the following statement:

“..... I do not know the contents of
Ex.P1 report.....”

Therefore, it is contended before us that as the accused supports a different political party from that of PW-1 and several others in the village and because of the political rivalry, he was sought to be implicated in the crime unnecessarily and unjustly.

We are not at all impressed by this contention, for, PW-1 in his statement has categorically stated that he is an uneducated person and hence, he went to the Sarpanch of the village and sought for his help to lodge a complaint with the Police. He has affixed his left hand thumb impression on the complaint. If a person is not an educated person and when he has been put a question whether he knows the contents of the written complaint, the answer could be that ‘he does not know the contents’. The contents of a written statement are trusted by him for their truthfulness and faithfulness. The complaint is drafted by someone other than PW-1 to his dictation. Therefore, the confidence of PW-1 could be that the

contents of the complaint are faithfully and truthfully recorded as per his dictation. But, if a question is put as to whether he is sure about the contents or not, any truthful person would only give an answer as that 'I do not know the contents'. It is thus clear to us that PW-1's deposition cannot be discredited basing on this stray statement. Even that statement, as was noticed by us supra, is a faithful and truthful statement. He never tried to vary his version. He was very faithful and he was also confident that the contents of Ex.P-1 complaint are exactly the same as was dictated by him. Hence, we find no merit in the contention canvassed by the learned counsel for the appellant to discredit PW-1's statement in this regard.

The next criticism of the learned counsel for the appellant that the presence of PWs 1 to 3, at so early an hour in the morning near about a Kirana Shop, is an unnatural event, does not hold much merit either. All these witnesses are residents of the village called Nallakunta and in villages mercifully people are still maintaining the old habits of going to bed early and waking up early. Therefore, the presence of PWs 1 to 3 at the Kirana Shop at a time between 5.00 and 6.00 AM is not an unnatural event. This apart, PW-1 has categorically stated that he has gone to the Kirana Shop to buy Beedies, obviously, signifying that he is in the habit of smoking and the smokers' urge would have taken him there as soon as he has got up from the bed. Therefore, the criticism of the learned counsel for the appellant that the presence of PW-1 at the Kirana Shop at that hour cannot be treated as anything unnatural.

In our opinion, the evidence of PW-4 is very important and crucial. PW-4 is the wife of PW-3. She knew both the accused as well as his wife. She also stated that PW-1 is her relative and so is PW-2. It is PW-4, who deposed as under:

“..... On the date of the incident at about 5.00 A.M., PW.1 came to our kirana shop situated in our house for purchasing

beedis. At that time PW.2 Madakam Sathyam was also came for taking an axe. At that time accused came out from his house holding Kota Kathi which is with blood stains and stated to PW.1 that he (accused) killed his (PW.1) sister (deceased) with the said knife and by saying so he ran away from that place. Then PWs.1 to 3 and I went into the house of the accused and saw the dead body of the deceased lying on the cot in supine position.....”

Thus, PW-4, who is not only a neighbor of the accused and the deceased, but being the wife of PW3 in whose house the Kirana Shop was situate, was not merely present there, but was almost one of the foremost persons in the village, who had come to know of the killing of the deceased. It is PW-4, who categorically stated that the accused came out of his house holding the knife MO-1 with blood stains.

The deceased is the wife of the accused. Therefore, it is for him to establish as to whether there is any possibility for any third-party to gain access to his house any time prior to 5-00 AM. In fact, he has failed to discharge this burden lying on him, as he did not put any such suggestion to any of the witnesses. This apart, the inspiration for the suggestion that the appellant is not guilty of the offence charged of, reliance was sought to be placed upon the Post-mortem examination report marked as Ex.P-7. In fact, the doctor, who conducted the post-mortem examination, has been examined as PW-12. He has noticed the following injuries on the body of the deceased ante-mortem.

1. Incised wound of 5 x 2 x ½ inches over the front of the neck below thyroid cortelege.

2. Incised wound of 5 x ½ cm over right side of the neck.
3. Incised wound of 5 x ½ cm over the right side of the neck below thyroid cartilage.
4. Fracture cervical spinal cord at C4 C5 level.
5. Fracture trachea with rupture oesophagus.

The injuries are stated to have been caused by a sharp object. The cause of death of the deceased was spelt out as '*Cardio Respiratory Arrest secondary to Transection of Cervical Spinal Cord with Neurogenic shock*'. The only suggestion put to him in the cross-examination by the accused was that he has not mentioned the age of the injuries. The Post-mortem examination commenced around 3-00 PM on 20-06-2007. Therefore, the fact that the injuries might have been caused as per the assessment of the doctor (PW-12) between 16 and 20 hours back, is of not much significance, inasmuch as the offence may not have been committed precisely at 5-00 AM or a few minutes prior to 5-00 AM, but it might have been committed even earlier thereto. Therefore, we do not have the slightest of a doubt in our mind that the accused being the husband of the deceased, none could have gained access to his house any time prior to 5-00 AM, for us to doubt whether the accused may not be the person, who might have committed the offence. The burden lying on him has not been discharged to establish that he was not the one, who could have possibly committed the offence.

The learned counsel for the appellant would also criticize that the personal knowledge of the events by the witnesses, as spoken to by them, is the result of political rivalry. This apart, it is contended that there is no good reason for the accused to have killed his own

wife. The answers are found in the deposition of PW-5. PW-5 is the elder sister of the deceased and PW-1. She has categorically deposed that ten days prior to the incident, she visited the house of the accused and upon coming to know that the accused was still quarrelling with his wife (deceased), suspecting her character and fidelity, she admonished the accused in that regard. It has been categorically stated that in spite of bearing three children from out of the marriage of the deceased with the accused, if he were to still suspect the character of the deceased, no one would appreciate that. This witness is so faithful and that she has also stated that she offered to take away the deceased from the company of the accused and it is the deceased, who resisted to move out of the house of the accused, on the pretext that when she has not committed any such mistake as suspected by the accused, it would not be just to move out of his house. This apart, the daughter of the deceased and the accused is staying with PW-5 in her house. Therefore, the motive for the offence, as spoken to by PW-5, is the result of the eternal suspicion of the accused over the character of the deceased. It is, in fact, PW-1, who deposed that there are six children born to them, out of whom three are surviving. If the accused were to suspect the character of the deceased in spite of bearing six children through him, we can only say that he has been laboring under a thoroughly wrong impression and as a result of the misguidance, he had resorted to the offence.

We, therefore, do not find any justification whatsoever to interfere with the conviction and sentence handed down by the learned V Additional Sessions Judge (FTC), Khammam at Kothagudem. Accordingly, we have no hesitation to dismiss the Appeal and accordingly do dismiss the same.

NOOTY RAMAMOHANA RAO, J.

ANIS, J.

Note:

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09.09.2015.