

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

Criminal Appeal No.1013 of 2010

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Dated 06th June, 2016

Between:

Boya Akuthota Nagaraju

.....Appellant

And

The State of A.P., rep.by
the Public Prosecutor,
Hyderabad

.....Respondent

Counsel for the Appellant: Smt.Lakshmi D.S.

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This criminal appeal is filed by the sole accused in Sessions Case No.73 of 2010 on the file of the learned Judge, Family Court-cum-Additional District & Sessions Judge, Anantapur whereunder he was convicted for the offence under Section 302 IPC and was sentenced to undergo imprisonment for life and pay a fine of Rs.200/-, in default to suffer rigorous imprisonment for a period of two months.

The case of the prosecution, in brief, is that the deceased was the second wife of the appellant (hereinafter referred to as the accused). The accused married one Lalitha D/o Lingappa of Enumuladoddi Village, Kundurpi Mandal eight years prior to the

commission of offence. On 15.04.2008, the accused took her to Venkatammagutta near Palavai and murdered her with axe suspecting her character. In connection with the said offence, FIR No.49 of 2008 under Section 302 IPC was registered in Kalyandurg Rural Police Station and the said case is pending trial in S.C.No.218 of 2009 in the Court of the learned IV Additional Sessions Judge, Anantapur. While so, one year prior to 26.10.2009, the accused married the deceased, who was the second daughter of PW.1. From the time of marriage, the accused was harassing the deceased suspecting her character and also on the ground that she was not looking after his son born to his first wife. Due to the harassment by the accused, the deceased went to her parents' house at Golla Village and started living with them. The accused also followed the deceased to the latter's parents' house. As the deceased had sixth month pregnancy, he went to his in-law's house on 26.10.2009 and requested them to send the deceased along with him to Palavai village as he wanted to perform the function of 'Seemantham' at his village. Believing the accused, PW.1 and Smt.Boya Ramanjinamma (LW.2) sent the deceased along with the accused. On the evening of 26.10.2009, the accused along with the deceased went to their house. From 8.30 pm on that day, the accused picked up quarrel with the deceased which was witnessed by PW.4 and Smt.Boya Hanumakka (LW.7), neighbours of the accused and the deceased. On the following day i.e., 27.10.2009, at about 6.30 am, when PW.4 and Smt.Boya Hanumakka (LW.7) came out of their house, the accused was found vomiting outside his house by consuming some pesticide poison. PW.3 called 108 Ambulance to send him to the hospital. When PWs.3 and 4 went inside the house of the accused, they found the deceased dead with an injury on her neck. The accused was sent to the hospital for treatment in 108 Ambulance. PW.1 and Smt.Boya Ramanjinamma (LW.2) received information from PW.3 about the death of the deceased over phone, upon which, they rushed to Palavai village along with PW.2 and Boya

Hanumantharayudu (LW.3) and other relatives.

On the report of PW.1, PW.9 registered a case and investigated the same. PW.8 held inquest over the dead body of the deceased in the presence of PW.5 and Jaragolla Ramamohan (LW.10) and sent the body for post mortem examination. Observation scene of offence panchanama was prepared in the presence of PW.6 and Kamma Krishnama Naidu (LW.12). PW.7 and Dr.Prabhakar Naidu (LW.15) conducted post mortem examination over the body of the deceased and issued Ex.P5, post mortem report.

PW.9 arrested the accused on 30.10.2009 in the presence PWs.4 and 5 and the accused was sent for remand. PW.10 verified the investigation made by PW.9. After completion of the investigation, PW.10 filed the charge sheet. As the accused denied the charge against him and preferred to be tried, the prosecution examined PWs.1 to 10 and marked Ex.P1 to P12, besides producing MOs.1 to 5. On behalf of the defence, no oral and documentary evidence was adduced.

On appreciation of oral and documentary evidence, the trial Court found the accused guilty and sentenced him to undergo imprisonment as noted *supra*. Feeling aggrieved by the judgment of the trial Court, the accused filed the present appeal through legal aid.

We have heard Smt.Lakshmi D.S., learned counsel for the accused, and the learned Public Prosecutor (AP).

This case is based on circumstantial evidence. PWs.3 and 4 are crucial witnesses examined by the prosecution. Both these witnesses were neighbours to the accused and the deceased. In his evidence, PW.3 has deposed that about six months back, when he went to the house of his junior maternal aunt on work, he has seen a gathering at the house of the accused, that at that time he has observed that the accused was vomiting, that the deceased was found lying in the house and that as someone has already summoned 108 Ambulance, the accused was taken in that ambulance on its arrival.

He has further deposed that then the incident was informed by him on phone to his brother-in-law, Sekharappa, who is a resident of Golla Village. This witness was very briefly cross examined. The only pertinent suggestion that was given to him by the defence was that he has not gone to the house of the accused and observed the dead body of the deceased nor he has informed the same to his brother-in-law, Sekharappa and that he was speaking falsehood.

PW.4, who was also a resident of Palavai village, testified on the same lines as PW.3. He has deposed that about six months back at about 8.00 pm, the accused and the deceased came to their house, that he has observed that they were quarrelling with each other and that on the next day morning, he has observed a gathering at the house of the accused. He has further deposed that he came to know that the accused has consumed pesticide, that he has seen 108 van coming and taking the accused to the hospital and that thereafter he and others went inside the house and observed that the deceased was dead. He has also deposed that the accused is responsible for the death of the deceased and that he was also responsible for the death of his first wife. Nothing worth mentioning could be elicited from this witness by the defence, except suggesting that he was speaking falsehood about the accused killing his first wife and witnessing altercation between the accused and the deceased.

The evidence of these two witnesses completely supports the case of the prosecution that when the deceased was at her parents' house with sixth month pregnancy, the accused brought her back to his village at about 8.00 pm on 26.10.2009 and that on the following day, she was found murdered in the house of the accused. Nothing was suggested to either of these witnesses that either they have enmity with the accused or that they are interested witnesses speaking falsehood on that count.

On a careful consideration of the evidence of these two witnesses, we have no reason to doubt the veracity of their testimony.

The evidence of these witnesses is lent corroboration by the inquest report, seizure mahajarnama, post mortem report etc. In Ex.P3, inquest report, which contains all the relevant details and one of the earliest documents, panchayatdars as well as blood relations have suspected that the deceased was done to death by the accused following the quarrel during the previous night, by tying the neck of the deceased with a rope and stamping on her stomach with legs. In Ex.P5, post mortem report, PW.7 opined that the deceased would appear to have died of asphyxia due to strangulation. In Ex.P4, seizure mahazarnama, MO.5 nylon rope was seized. PW.6 is one of the panchayatdars to Ex.P4 and he spoke about seizure of MO.5. Though he has admitted that he does not know the contents of Ex.P4 and made contradictory statements regarding the place of drafting Ex.P4, his evidence to the extent of his observing MO.5 by the side of the dead body cannot be disbelieved. The learned counsel for the accused pointed out that there is variation on the description of rope between Ex.P4 and the evidence of PW.6. No doubt, PW.6 in his evidence described the rope as 'Nulu', meaning in Telugu as made of cotton thread, and in Ex.P4 it is described as Nylon. In our opinion, this variation is not material, in that while PW.6 has described MO.5 in Telugu, in Ex.P4 the same was described in English. In this process, the wrong description of MO.5 by PW.6 was quite possible.

Though the accused took the stand that he stayed back in his in-law's house, the same was not substantiated by producing any evidence. It is highly unnatural that when his wife was sent to his house, the accused will stay back in his in-law's house. PW.1, the father of the deceased spoke about the accused taking the deceased to his house on the day on which the latter was killed. This testimony is lent ample support by PWs.3 and 4. It is thus clearly established that the deceased was killed in the house of the accused. Therefore, the accused alone is presumed to have the exclusive knowledge of the manner of the death. Under Section 106 of the Indian Evidence Act,

1872 burden of proof rests on the accused to show that the deceased was done to death in a manner different from what is alleged by the prosecution. A close examination of the stand taken by the accused in his examination under Section 313 Cr.P.C., would show that no effort whatsoever was made by him to discharge this burden.

The learned counsel for the accused submitted that the accused may be given benefit of doubt. We are afraid, we cannot accede to her request. As noted hereinbefore, there is clear circumstantial evidence proving that the deceased would not have been killed by any one other than the accused himself. Moreover, it has come on record in respect of which there is no dispute that the appellant is accused of killing his first wife also. The deceased had sixth month pregnancy and the accused has not only committed homicide by killing his wife but also foeticide by killing foetus in the womb of the deceased.

In the above facts and circumstances, we do not find any reason to disbelieve the case of the prosecution and the trial Court has rightly convicted the accused under Section 302 IPC and sentenced him to suffer life imprisonment.

In the result, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

06th June, 2016
VGB