

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

CRIMINAL APPEAL No.1199 of 2010

Date:01.06.2016

Between:

Koppu Vadde Venkata Swamy,
S/o Vadde Hanumanna

.....Appellant/
Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor

....Respondent

Counsel for the appellant: None appeared

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

The sole accused in SC ST SC No.98 of 2008 on the file of the learned Special Judge for Trial of Cases under SC & ST (POA) Act-cum-VI Additional District and Sessions Judge, Kurnool, filed this Criminal Appeal against judgment, dated 18.8.2010, whereby he was convicted for the offences punishable under Sections 302 and 397 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of

Rs.500/-, in default, to suffer simple imprisonment for a period of three months for the offence punishable under Section 302 I.P.C. and also to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.100/-, in default, to suffer simple imprisonment for one month for the offence punishable under Section 397 I.P.C.

2. The prosecution case, in brief, is that the appellant is a resident of Malyala Village, Nandikotkur Mandal, Kurnool District, and he belongs to non-schedule caste. The deceased - Harijana Mallepogu Laxmamma, aged 80 years, at the time of her death, was also the resident of the same Village as that of the appellant. P.Ws.1 and 2 were the daughters of the deceased and residents of the same Village. The deceased was residing at H.No.5/134 of Harijana Nagar, Malyala Village along with her daughter - P.W.2. A few days prior to 07.12.2005, i.e., the day of occurrence, P.W.2 went to her daughter's Village viz., Bijinavemula and due to the same, P.W.1 and her daughter-in-law – P.W.3 were providing food to the deceased. On 07.12.2005, at 09.00 hours, while the deceased was sleeping on a cot at her house, the appellant with an intention to rob her silver rings (kadiyalu), throttled her throat and demanded her to part with them. When the deceased declined, the appellant beat her, pushed her down and forcibly relieved her of her silver ornaments weighing 10 tulas from both her hands and ran away. On 08.12.2005 at 08.00 hours, P.W.1 went to serve food to the deceased and saw injuries over her body. The deceased narrated the incident that occurred on the previous night to P.W.1 as well as P.W.2. Both these witnesses found a phone book near the deceased which belongs to the appellant. They have also found a photo of the mother of the appellant in the said book. As faction was prevailing in the Village and the appellant is an active member of the faction, they did not venture to question him. On the evening of 08.12.2005, the deceased was shifted to the house of L.W.4 – Harijana Sunnampuri Thirumalaiah -husband of P.W.3

along with her cot. At about 11.30 p.m., on 08.12.2005, the deceased succumbed to the injuries.

On the report of P.W.1, P.W.8 recorded her statement and forwarded the same to Nandikotkur Police Station. On receipt of the report, P.W.10 registered a case in Crime No.116 of 2005 of Nandikotkur Police Station for the offences punishable under Sections 302 and 397 I.P.C. and Section 3(1)(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and submitted the copies of First Information Report to all the officers concerned, for further investigation.

On receipt of F.I.R., P.W.11 took up further investigation, conducted inquest over the dead body of the deceased in the presence of P.W.8 and L.Ws.7 and 8 – Kuruva Avula Venkata Ramana and Pinjari Abdul Shariff, seized the blood stained material objects from the dead body of the deceased at the scene of offence and sent them to the Regional Forensic Science Laboratory, Kurnool, through the Court for analysis.

As per the orders of the Superintendent of Police, Kurnool, P.W.12 took up investigation in the case, examined the witnesses and recorded their statements. During the course of his investigation, P.W.12 arrested the appellant and on his confession, seized the stolen property, *i.e.*, silver kadiyalu in the presence of L.W.9 – K.Srinivasulu and P.W.7 under the cover of panchanama. On 07.05.2006, at 17.00 hours, the Panchayat Secretary of Malyala Village conducted identification parade of the property, in which P.W.1 identified the same as belonging to her mother. P.W.9 - the Head of the Department of Forensic Medicine, Kurnool Medical College, Kurnool, conducted autopsy over the dead body of the deceased and opined that the death of the deceased resulted due to the complications arising from pressing of the neck. After completing the investigation, P.W.12 filed the charge sheet.

3. As the appellant denied commission of the offence and preferred

to be tried, the prosecution examined P.Ws.1 to 12, marked Exs. P-1 to P-15 and produced M.Os.1 to 6. On behalf of the defence, no evidence was adduced. On conclusion of trial, the Sessions Court convicted the appellant and sentenced him as indicated supra.

4. Though the learned counsel for the appellant is not present at the time of hearing, we have carefully gone through the entire record besides hearing the learned Public Prosecutor (AP).

5. The prosecution case is based on circumstantial evidence as there was no direct witness to the alleged offence. It is trite law that in a case based on circumstantial evidence, the prosecution has to establish all the links in the chain of circumstances beyond reasonable doubt.

6. In order to examine as to whether the prosecution has succeeded in establishing its case beyond any reasonable doubt, it is necessary to start with the scrutiny of Ex.P-1 - the report given by P.W.1, one of the daughters of the deceased. She, *inter alia*, stated in her report that the deceased had two daughters including herself. That as P.W.2 - her sister and another daughter of the deceased, was discarded by her husband, she is living at Malyala Village with her mother - the deceased for the last twenty years in the house provided to the latter by the Government. That two days prior to the incident, P.W.2 left for Bijinavemula village i.e., her daughter's place as she fractured her leg due to the fall of paddy bag on it and on the night of 07.12.2005, P.W.1's daughter-in-law - P.W.3 served meal to the deceased; that on the next day morning at about 8.00 a.m., P.W.1 carried meal to the deceased; that she was then informed by the deceased that on the previous night, the appellant came to her house, held her neck and asked to give silver kadiyalu (bangles) weighing about 10 tulas, and when she refused his demand, he snatched them; that in that process, the deceased received injuries on her left hand

and that when the deceased tried to raise cries, he threw her down causing injury on her right leg. That P.W.3 also arrived at the house when the deceased was narrating the incident to P.W.1. P.W.1 further stated in the report that the appellant is a factionist and so they kept quiet. That on the night of 08.12.2005 at about 11.30 p.m., the deceased died. That the cost of silver bangles is about Rs.1,000/- and that due to the injuries caused by the appellant in the process of snatching away the silver bangles, the deceased died.

7. Now, let us consider the deposition of P.W.1. Apart from repeating what she stated in Ex.P-1 report, P.W.1 further added in her evidence that the deceased also informed her that the appellant committed rape on her. In her cross examination, she deposed that besides her finding scratches on the hands and legs of her mother – the deceased, she also found semen stains near the private parts of the deceased and that she informed P.W.8 that she was informed by the deceased that the appellant committed rape on her. It is of interest to note that P.W.1 has not made a whisper about the alleged rape of the deceased in Ex.P-1 report. It is not surprising that in the absence of such allegation, even P.W.9 has not examined the deceased while conducting post mortem from the angle of rape and understandably, Ex.P-7 – post mortem report is silent as to whether there were any traces of the act of rape on the body of the deceased. While the doctrine of *falsus in uno falsus in omnibus* is not applied in the Indian context of criminal jurisprudence, in our opinion, the case on hand is eminently a fit case for applying this doctrine. The alleged theft and rape constitute a composite act allegedly committed by the appellant. The truthfulness or otherwise of the evidence of witnesses has, therefore, to be judged with reference to the allegations made against the appellant. While we certainly understand that it is always possible for the prosecution witnesses to indulge in embellishments and embroideries to make the case stronger, we cannot trust the testimony of the main witness – P.W.1, who without even whispering about the

alleged heinous crime of rape against the appellant in Ex.P-1 - report, makes a graphic narration of such an offence allegedly committed by the appellant on the deceased, who was 80 years old, in her evidence. The falsity of the version of P.W.1 is further exposed if we scan through the evidence of P.W.8. In his cross examination, P.W.8 admitted that he drafted Ex.P-1 and that P.W.1 did not inform him that the deceased informed her that the appellant committed rape. It is noteworthy that even as per Ex.P-1, the appellant is a factionist. In her deposition, P.W.1 admitted that her family members are the supporters of Telugu Desam party and the appellant belongs to Congress party. It is thus, a clear case that there were factions in the Village, which has obviously lead to the false implication of the appellant. This conclusion of ours is further supported by the wholly unnatural conduct of P.Ws.1 to 3. It is the case of the prosecution that the deceased, who was 80 years old, was with P.W.2 and that on the night of the occurrence, P.W.2 left for her daughter's place. It is unthinkable that a woman of 80 years of age, who was almost confined to bed, was left all alone in the house without being attended to by her own kith and kin, such as P.Ws.1 and 2 – the daughters of the deceased and P.W.3 - the daughter-in-law of P.W.1. The incident was stated to have occurred during the night of 07.12.2005. While in Ex.P-1 report, P.W.1 stated that she carried meal to her mother on 08.12.2015 at 8.00 a.m., in her evidence, she deposed that she came to know about the incident at about 10.00 a.m. At least, on coming to know about the alleged commission of the offence, no steps were taken by P.W.1 or her family members to inform the same to anybody, much less to the Police till the morning of 09.12.2005. At least, immediately after the deceased succumbed to the alleged injuries at 8.30 p.m. on 08.12.2005, neither a Police report was given nor anyone else was informed about the death till the morning of 09.12.2005. The only excuse that was sought to be offered for all this was that the appellant was a factionist. On the own showing of P.W.1, even her family

members belong to the opposite faction. It is quite natural that in such circumstances, even a small event involving the members of opposite faction would cause hue and cry in the camp of the other faction. These circumstances would leave us in no doubt that the whole prosecution case is foisted on the appellant, who appears to be an active member of the political party, which is opposed to the party, to which the prosecution party belongs.

8. The law is well settled that the unexplained delay in lodging the F.I.R. is fatal to the case of the prosecution. (See **Thulia Kali vs. State of Tamilnadu**^[1] and **Mearaj Singh vs. State of U.P.**^[2]) When the alleged incident was detected at about 10.00 a.m. on 08.12.2005, no Police report was given for more than 24 hours and as noted above even after death of the deceased at about 11.30 p.m. on 08.12.2005, Police report was not given till 11.00 a.m. on 09.12.2005. Thus, there was an unexplained delay about 36 hours after the appellant allegedly committed the offence and more than 12 hours after the death of the deceased before the complaint was lodged with the Police. It is relevant to note that the distance between the place of the occurrence and the Police Station is just 7 kilometers.

9. A perusal of the judgment of the Sessions Court shows that it has relied upon the doctrine of *res gestae* under Section 6 of the Indian Evidence Act, 1872. On the facts of the present case, the said doctrine has absolutely no application.

10. As regards the alleged recovery of M.O.1 – silver kadiyalu, the prosecution relied upon Ex.P-13 – the admissible portion of the confessional statement contained in Ex.P-3. It needs to be noted that the alleged incident occurred on 07.12.2005 and the alleged confession was made on 07.05.2006. It is highly inconceivable that a person, who committed the alleged offence for the sake of stealing the silver ornaments worth Rs.1,000/-, will keep the stolen articles with him

for five months in his house. Indeed, in his Section 313 Cr.P.C. examination, the appellant in reply to question No.44 stated that the Sub-Inspector got the silver articles made by taking money from him. The appellant also stated in reply to question No.68 that he belongs to Congress party and the prosecution party belongs to Telugu Desam party and as there were party factions, he was falsely implicated in the case. Though the statement made under Section 313 Cr.P.C. does not constitute evidence, in the light of the lacunae in the prosecution case as observed above, the stand of the appellant assumes relevance.

11. In the light of the above facts, we are of the opinion that the prosecution has miserably failed to bring home the guilt of the appellant beyond any reasonable doubt and he was erroneously convicted and sentenced by the Sessions Court.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in judgment, dated 18.08.2010, in SC ST Sessions Case No.98 of 2008, on the file of learned Special Judge for Trial of Cases under SC ST (POA) ACT-cum-VI Additional District and Sessions Judge, Kurnool, for the offences punishable under Sections 302 and 397 I.P.C. are set aside and he is acquitted. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other offence and the fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

01st June, 2016

GHN/DR

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[\[1\]](#) AIR 1973 SC 501

[\[2\]](#) (1994)5 SCC 188