

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

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.136 of 2010

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Dated 15th February, 2016

Between:

Palakurthy Lingaiah,
S/o Srihari

.....Appellant

And

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

.....Respondent

Counsel for the Appellant: Mrs. C.Vasundara Reddy

Counsel for the Respondent: Public Prosecutor

The Court made the following:

JUDGMENT: (per CVNR, J)

This Criminal Appeal arises out of judgment, dated 03.12.2009, in Sessions Case No.239 of 2009, on the file of the learned III Additional Sessions Judge, Warangal, whereby the appellant was convicted for the offence punishable under Section 302 I.P.C., and was sentenced to undergo imprisonment for life and also to pay a fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for two months.

The case of the prosecution is that the appellant is the neighbour of the deceased and staying along with his wife, Lakshmi, and two children. The appellant and his wife used to quarrel frequently and the deceased used to advise them not to quarrel. Two

days prior to the incident, i.e., on 23.12.2008, the accused beat his wife and the latter left the house. On the next day, the appellant questioned the deceased as to where she has hidden his wife and thereupon, the deceased abused the appellant. On the next day, when the deceased was sitting on the pail of her house and combing her hair, the appellant went there, questioned her about his wife and caught hold of her hair and cut her throat with a knife. On receiving the information about the incident, PWs.1 and 2 rushed to the scene of offence. Immediately, thereafter, at around 12.15 hours, PW.1 has given a report to the Police and the same was registered as Crime No.178 of 2008 by PW.10, Assistant Sub-Inspector of Police. The Circle Inspector of Police (PW.11) took over the investigation, visited the scene of offence, prepared rough sketch of the scene of offence and also held scene of offence panchanama in the presence of PW.6, which are marked as Exs.P7 and P8 respectively. PW.11 has held inquest over the dead body of the deceased and prepared Ex.P9 inquest report.

The dead body of the deceased was forwarded for post-mortem examination. On 25.12.2008, at 4.00 pm on receipt of requisition, PW.9, Assistant Professor, KMC, Warangal held autopsy over the dead body of the deceased. On the same day, in the evening hours, PW.5 saw the accused holding a knife and on seeing the same, he caught hold of the accused, tied him to a pole and later, informed the Police. At about 5.00 pm, on receiving the information, PW.11 rushed to the scene of offence and recovered Material Object Nos.1 and 2, which are knife and blood stained banian respectively, in the presence of PW.8 under Ex.P10, panchanama. PW.1 has forwarded the Material Objects to the Regional Forensic Science Laboratory for test.

After receiving the relevant documents and on completion of the investigation, the successor of PW.1 has filed the charge sheet.

In support of its case, the prosecution has examined PWs.1 to 11 and marked Exs.P1 to P14, besides producing MOs.1 to 6. Among the prosecution witnesses, PWs.3 and 7 are the eye-witnesses.

Based on the oral and documentary evidence, the lower Court has convicted the appellant for the offence punishable under Section 302 I.P.C., and imposed the sentence as referred to above.

At the hearing, Mrs.C.Vasundara Reddy, learned counsel for the appellant/accused, has argued that the testimony of PWs.3 and 7 is wholly untrustworthy and that PW.3 has not spoken to the presence of PW.7 at the time of the alleged incident in her evidence, while PW.7 has deposed that she along with PW.3, a tenant of the deceased, and one Jhansi (LW.6) were present at the house of the deceased when the alleged incident has taken place. She has further argued that the evidence of PWs.3 and 5 is very hazy and ambiguous and in the absence of corroboration between the testimonies of the alleged eye-witnesses, viz., PWs.3 and 7, it is wholly unsafe to convict the appellant. She has further argued that though the presence of Jhansi (LW.6) was spoken to by PW.7 in her evidence, the prosecution has not explained the reason for not examining her.

The learned Public Prosecutor seriously opposed the above submissions of the learned counsel for the appellant and submitted that though there may be minor contradictions in the evidence of the eye-witnesses, the prosecution has driven home the guilt of the accused beyond reasonable doubt through the evidence of PWs.3 and 7, eye witnesses, and that therefore, it is not a fit case for interfering with the conviction and sentence imposed on the appellant.

We have carefully considered the respective submissions of the learned counsel for the parties and gone through the evidence.

PW.1, who is the grandson of the deceased, is not an eye witness. He has deposed that when he was in Warangal, he has received a phone call from the Police about the incident. So this witness has no personal knowledge of the manner in which the alleged offence has been committed. Therefore, his evidence is hearsay. Even the testimony of PW.2, who is the son of the deceased, is not based on his personal knowledge and hence, he is also not a

direct witness.

However, PWs.3, 5 and 7 are stated to be the eye witnesses. PW.3 in her chief-examination deposed that she is a resident of Gorrekunta Village, that she is employed in a cakes company, that she knows the appellant, PWs.1, 2, 7 and Jhansi (LW.6), that the appellant's wife used to inform the deceased about the disputes with the appellant and that two days prior to the incident, the appellant has beaten his wife, as a result of which, the latter has gone to her sister's house. As regards the alleged incident she has deposed as under:

“On the next day accused went to the house of the deceased and questioned the deceased where she secretly kept his wife. Then Kanthamma was abused by the accused. Again on 25.12.2008, the accused came there and beat Kanthamma where she kept her wife. Myself and Jhansi looked after Kanthamma after receipt of injuries being killed by the accused by using a knife used for cutting the palmarah branches. On seeing the knife we left the place.”

In her cross-examination, PW.3 has admitted that she goes to work at 10.00 am regularly, except on holidays and that the deceased is her maternal grandmother by courtesy. She is unable to state as to whether the appellant was in a drunken condition at the time of the alleged incident and that the deceased was sitting at the threshold of her house and combing her hair.

PW.5, who is another eye witness, testified that he is resident of Gorrekunta Village and has been running a pan shop, that he knows the appellant and the deceased, PWs.1 to 4 and K.Swamy (LW.10), that his shop is at Ambedkar Chowrastha and that on 25.12.2008 at 10.00 am, the deceased died as she was killed by the accused. He has further deposed that on the evening of that day, himself and K.Swamy (LW.10) witnessed the appellant holding a knife and that they tied the appellant to an electrical pole and informed the same to the Police and that the Circle Inspector who later came and arrested the appellant. In his cross-examination, PW.5 deposed that they have not taken the knife from the appellant when they were tying him to the

electrical pole. He denied the suggestion that he and K.Swamy (LW.10) have not apprehended the accused and that he was deposing falsely at the instance of the police.

PW.7, who is also claimed to be an eye witness, deposed in her cross-examination that herself, PW.3 and Jhansi were sitting in the house of the deceased, in which PW.3 is a tenant, that when they were talking to each other, the appellant came to the pial of the house of the deceased while she was at the threshold, abused her and caught hold of her hair and cut her throat with a knife. He has also spoken to the earlier incidents involving the accused, his wife and the deceased as spoken to by the other witnesses.

A careful scrutiny of the evidence as discussed would show that there are certain material contradictions in the evidence of the witnesses. While PWs.4 to 7 have categorically spoken about the presence of PW.3, along with another person, by name, Jhansi, PW.3 has not spoken to the presence of PW.7 at the time of the incident. Though Jhansi was examined as LW.6 during the investigation and her statement was recorded, for the reasons not explained by the prosecution, she was not examined as a witness. We also notice a material contradiction in the evidence of PW.7 regarding the place at which the appellant has attacked the deceased. While in her chief examination, she has stated that the deceased was sitting at the threshold of her house and in her cross-examination, she has deposed that the deceased was sitting inside her house when the alleged incident has taken place. The evidence of PW.3 is vague and highly ambiguous. She has deposed that the appellant came to the scene of offence and beat the deceased, but she failed to explain the sequence and the manner in which the appellant has attacked the deceased and killed her. Her evidence does not inspire confidence at all.

On a careful scrutiny of the evidence of PW.5, it appears to us to be highly untrustworthy. He is also not categorical about the manner in which the appellant has attacked the deceased. He has made a

very vague statement that on 25.12.2008 at 10.00 am, the deceased died as she was killed by the accused. He then went on to state that on the evening of that day, himself and K.Swamy (LW.10) saw the appellant holding a knife and thereupon, they have tied the appellant to an electrical pole. If a person has committed an offence of murder, his holding knife till evening in public view militates against the natural human conduct. Moreover, as pointed out by the learned counsel for the appellant, PW.5 has stated in his cross-examination that they have not even seized the knife from the appellant, while allegedly tying him to the electrical pole. The whole version of PW.5 looks highly artificial, not worthy of acceptance.

On a careful appreciation of the evidence on record, we are of the opinion that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 03.12.2009, in Sessions Case No.239 of 2009, on the file of the learned III Additional Sessions Judge, Warangal for the offence punishable under Section 302 I.P.C., are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

15th February, 2016
VGB