

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

AND

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

CRIMINAL APPEAL No.1074 of 2010

**-
26.04.2016**

Between:

Kadavath Sreenu

..Appellant/Accused

And

The State of Telangana,
represented by its Public Prosecutor, Hyderabad.

..Respondent

Counsel for the appellant: Mr.Kiran Kumar Vadlamudi

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

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

The sole accused in S.C.No.743 of 2007 on the file of learned I Additional Sessions Judge, Mahabubnagar, filed this appeal against the judgment, dated 23.06.2009, whereby while acquitting him for the offence punishable under Section 376 I.P.C., the Sessions Court convicted him for the offences punishable under Sections 201, 302 and 379 I.P.C. and sentenced him to undergo Rigorous Imprisonment (R.I.) for a period of two years for the offence punishable under Section 201 I.P.C., to undergo imprisonment for life and to pay a fine of Rs.100/- for the offence punishable under Section 302 I.P.C. and further to undergo R.I. for a period of two years for the offence punishable under Section 379 I.P.C.

2. The case of the prosecution, in brief, is that the deceased – Anjamma was given in marriage to one Jangala of Kondedu Village. About 10 years prior to the incident, her husband deserted her and since then she was eking out her livelihood by working as cooli in the poultry farm of one Seetharama Rao (L.W.10) at Chatanpally and residing in the house of one Chakali Yadamma (L.W.6) at Railway Station Road, Shadnagar. The deceased had developed illicit intimacy with the accused six years prior to the incident, to the knowledge of her mother and others. The deceased was insisting on the accused to marry her. As the accused was already married having a wife who on coming to know about her husband's illicit relationship with the deceased went to her maternal home saying that she would not return unless he severs his relationship with the deceased. In order to get rid of the deceased as she is insisting on him to marry her, the accused hatched a plan to eliminate the deceased. In order to

execute his plan, the accused took the deceased along with him on 17.05.2007 to a place situated at Chatanpally Village sivar, committed rape on her, killed her by beating her with a stick, committed theft of silver ornaments on her body worth Rs.5,000/- and threw the dead body into a dilapidated well at the outskirts of the Village in order to conceal the evidence. Subsequently, the accused approached P.W.7 and pledged silver ornaments by giving fake reasons. As the deceased went missing, P.W.1 – the mother of the deceased along with P.Ws.2 to 4 and L.W.5 – M.Ramulu went to the accused and enquired about the deceased. On that, the accused made extra judicial confession about the commission of crime, based on which P.W.1 gave Ex.P-1 report to P.W.10 – Sub-Inspector of Police, who registered crime No.216 of 2007 for the offences punishable under Sections 201, 302, 376 and 379 I.P.C. and issued Ex.P-10 – First Information Report (F.I.R.). Following the extra judicial confession, the accused lead the Police to the scene of offence from where the dead body of the deceased was recovered from a dilapidated well under Ex.P-7 - identification of body panchanama. P.W.10 held inquest over the dead body and prepared Ex.P-8 - inquest report. He recovered silver anklets and silver kadas stolen from the body of the deceased by the accused and pledged them with P.W.7 under Ex.P-9 – seizure panchanama. P.W.10 sent the dead body for post mortem examination. P.W.8 – Dr.A.R.Sharath Chandra, Civil Assistant Surgeon, conducted autopsy over the dead body and post mortem report. After completion of the investigation, P.W.10 filed the charge sheet.

3. The accused denied the commission of the offences and pleaded not guilty necessitating the trial, during which the prosecution examined P.Ws.1 to 10, marked Exs.P-1 to P-11 and produced M.Os.1 to 6. On behalf of the defence, Exs.D-1 and D-2 were marked. Exs.X-1 to X-3 were also marked. On appreciation of the oral and

documentary evidence, the Court below convicted and sentenced the accused in the manner as mentioned hereinabove.

4. This is a case based on the circumstantial evidence. The crucial witness for the prosecution case was L.W.6 – Chakali Yadamma, who was the landlady of the house, in which the deceased was living away from her parents after her husband deserted her. Her statement under Section 161 Cr.P.C. was recorded. However, the prosecution has given up her evidence, for the reason that she was won over by the defence.

It is the evidence of P.Ws.1 to 3 that about 10 days prior to the discovery of the dead body, L.W.6 – Chakali Yadamma has seen the deceased going along with the accused on his motor cycle. Due to non-examination of the aforesaid witness, the last seen theory propounded by the prosecution could not be proved. Therefore, in the absence of proof of last seen theory, the burden lies heavily on the prosecution to establish all the links in the chain of circumstances to pin down the accused in order to prove his guilt. Therefore, the Court needs to examine whether the prosecution has succeeded in establishing all the links in the chain of circumstances. For this purpose, Ex.P-1 – report, based on which the prosecution was set in motion, needs to be looked into.

P.W.1 - the mother of the deceased, lodged Ex.P-1 report. She stated therein that her daughter was residing in the house of L.W.6 – Chakali Yadamma near Railway Station Road, Shadnagar, and having illegal intimacy with the accused for the last 5 to 6 years. She further stated that as she has not visited her daughter for the last fifteen days, she along with her brother – P.W.2 went to Shadnagar on the day of her giving report to the Police and enquired with L.W.6, who informed them that about 10 days back, the deceased and the accused went to Chatanpally side on scooter and since then she has not returned. That herself, P.Ws.2 to 4 and L.W.5 - M.Ramulu went to the

accused and enquired about the deceased. That the accused informed them that he physically enjoyed the deceased and killed her and thereafter, he has taken the silver items on her body and threw the dead body into a well at Chatanpally Village and fled away. P.W.1 expressed her ignorance as to in which well the accused has thrown the dead body of her daughter. She, therefore, requested for taking action against the accused for physically exploiting her daughter, killing her and stealing the silver articles from her dead body. In the statement recorded by the Police under Section 161 Cr.P.C., P.W.1 repeated the contents of Ex.P-1.

P.W.2 - the brother of P.W.1, also repeated the statement of P.W.1 in her evidence. He, however, came out with a slightly varied version. He did not speak to himself, P.W.1 and others meeting L.W.6 – Chakali Yadamma. Instead, he deposed that he came to know through P.W.1 that L.W.6 informed P.W.1, that 10 days back, the accused took the deceased with him on scooter and killed her. He further deposed that on coming to know about the accused taking the deceased along with him through L.W.6, they all went to the accused and that the latter, informed them that he got the deceased drunk, enjoyed sex, killed her, took away her ornaments and thereafter, threw away the dead body into a well.

P.W.3 - who is one of the witnesses to Ex.P-6 – confessional panchanama, deposed that on coming to know about the accused taking the deceased with him on scooter about 10 days back through L.W.6 – Chakali Yadamma, P.W.1 lead him (P.W.3) and others to the house of the accused and on the accused confessing that he killed the deceased and threw her dead body into a well in the limits of Chatanpally Village, they all went to the well and found the deceased in the well.

5. The material contradictions between the versions of P.Ws.1 and 3 lie on the aspect whether the discovery of the body preceded Ex.P-1

– report or followed it. It is the case of P.W.1 and also P.W.10 – the investigating officer, that the body was recovered by the Police after receiving Ex.P-1 report. The evidence of P.W.3 directly contradicts the evidence of P.Ws.1 and 10. He deposed that after the dead body of the deceased was traced in the well, P.W.1 submitted Ex.P-1 - report scribed by this witness to the Police. This contradiction throws any amount of doubt on the whole case of the prosecution and renders the alleged confessional statement of the accused untrustworthy. Added to this serious lacuna in the case of the prosecution, serious doubt on the case of the prosecution has arisen with regard to the alleged recovery of the silver articles allegedly stolen by the accused. As per the case of the prosecution, as reflected from the charge sheet, the accused killed the deceased on 17.05.2007, on the alleged confession of the accused, the Police have recovered M.Os.1 and 2, - one pair of leg kadas and one pair of leg anklets from P.W.7 to whom the said articles allegedly stolen from the dead body of the deceased were pledged by the accused.

The evidence of P.W.7 is riddled with contradictions. In his chief examination, he stated that about 1½ years back, the accused came to his shop and pledged one pair of silver leg kadas and one pair of silver anklets and took Rs.5,000/-, agreeing to repay the said amount together with interest at the rate of Rs.3/- per Rs.100/- per month and get the ornaments released. That he entered the said transaction in bill book No.33 under bill/receipt No.3232, dated 21.05.2007, marked as Ex.X-2 and that Ex.P-3 is the original of Ex.X-2, which is dated 21.05.2007. He further deposed that on 06.05.2007, he gave Rs.4,500/- to the accused under bill No.3126 and Ex.X-3 is carbon copy of the same, that on that day, the accused informed him that he needs money as his mother was suffering from ailment, that 15 days later, the accused came to the witness and took away Rs.5,000/- pledging the very same items stating that he needs money for purchasing diesel and that again, on 21.05.2007, the accused repaid Rs.4,500/- and he endorsed the same on bill No.3126.

We have carefully perused both these documents. While Ex.X-2 is dated 21.05.2007, Ex.X-3 is dated 06.05.2007. As admitted by P.W.7, both these receipts pertain to the pledge of the same articles. It appears from the evidence of P.W.7 that initially the accused pledged silver articles on 06.05.2007 and borrowed Rs.4,500/- and it appears that after repaying Rs.4,500/- on 21.05.2007, he again borrowed Rs.5,000/- by pledging the very same articles. While it does not stand to reason as to why he repaid Rs.4,500/- and borrowed Rs.5,000/- on the same day, the crucial fact that remains is that the first time, he pledged silver articles, which are M.Os.1 and 2, was on 06.05.2007 itself. As noted above, the case of the prosecution is that the accused has done away with the deceased on 17.05.2007. That being so, there was no possibility of the accused committing theft of the silver articles from the body of the deceased, when she was very much alive and pledging the same on 06.05.2007. It is the specific case of the accused as reflected from his statement under Section 313 Cr.P.C. that M.Os.1 and 2 belonged to his wife. These circumstances would throw any amount of doubt on the case of the prosecution regarding the involvement of the accused in the death of the deceased and this Court cannot refrain from drawing a presumption that the prosecution created a story of the accused killing the deceased, stealing the silver articles from her body and pledging the same with P.W.7. In our considered opinion, the evidence let in by the prosecution lacks consistency among the material prosecution witnesses on various aspects as discussed above compelling this Court to disbelieve its whole case. The Court below having disbelieved the case of the prosecution with regard to the offence punishable Section 376 I.P.C., however, erroneously accepted the prosecution case with regard to the involvement of the accused in the commission of the offences punishable under Sections 201, 302 and 379 I.P.C., without proper evidence connecting the accused to the commission of those offences. As the case of the prosecution suffers from many

shortcomings raising serious doubts, it is not safe to convict the accused. It is further noticed that the Sessions Court erroneously directed destruction of M.Os.1 and 2 - silver articles after the appeal time. From the evidence on record, it is evident that those silver articles belonged to the wife of the accused as spoken to by him and therefore, we are of the opinion that M.Os.1 and 2 being valuables, they shall be returned to the accused.

6. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in judgment, dated 23.06.2009, in Sessions Case No.743 of 2007, on the file of learned I Additional Sessions Judge, Mahabubnagar, for the offences punishable under Sections 201, 302 and 379 I.P.C. are set aside and he is acquitted from all the charges which he was charged with. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other offence, the fine amount, if any, paid by him shall be refunded to him and M.Os.1 and 2 shall also be returned to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

26th April, 2016

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