

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL APPEAL NO.860 OF 2010

DATED:29-02-2016

Between:

Sannikanti @ Saniganti Srinu @ Srinivasa Rao ... Appellant

And

The State of A.P.
Through Inspector of Police
II Town P.S., Vijayawada
Rep. by Public Prosecutor
High Court of A.P., Hyderabad ... Respondent

COUNSEL FOR THE PETITIONER: Mr. S. Surender Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

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

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The prosecution laid charge sheet against the appellant, sole accused in S.C. No.119 of 2009, on the file of the Sessions Judge, Mahila Court, Vijayawada, for the offence under Section 302 of the Indian Penal Code. Aggrieved by judgment, dated 26.3.2010, passed in the said case, whereby the learned Sessions Judge has convicted the appellant - accused for the offence punishable under section 302 IPC and sentenced him to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months, this appeal is preferred by the accused.

2. The case of the prosecution in brief is stated hereunder. One Dasari Bujji, W/o. Raju, (P.W.1) lodged a complaint to the Police stating that she is residing in her own house at Sadhu John Street, Chittinagar, Vijayawada and she is also working as a Sweeper in Dwakra Group. She has let out the upper portion of her house to one Sunnekanti Padma (deceased), who was residing along with her husband Srinu (accused) and their children, since 05.06.2008. The accused was working as mason and also doing marble work. On 10.07.2008, P.W.1 went to her work and her daughter telephoned to her at about 9.30 a.m., about the death of the deceased and on her returning home, she found the body of the deceased lying down on the floor of the house. She has stated that the deceased belonged to Nellore and that she met with suspicious death. Based on her report (Ex.P.1), P.W.11 – Sub-Inspector of Police, II Town Police Station, Vijayawada, registered the case in Crime No.250 of 2008 under Section 174 CrPC, describing the death as 'suspicious death' on 10.07.2008, took up the investigation and issued First Information Report (Ex.P.7). After dispatching the FIR, P.W.11 recorded the

statements of P.Ws.1 to 7, conducted inquest over the dead body of the deceased and sent the same to the Government General Hospital, Vijayawada, for post-mortem examination. The Medical officer (P.W.5) after conducting the autopsy over the dead body, issued post-mortem certificate and opined that the death was due to asphyxia due to ligature strangulation. Basing on the opinion of the Medical Officer, P.W.12 altered the Section of law to Section 302 of IPC on 15.07.2008.

3. During the course of investigation, P.W.12 arrested the accused and after completing the investigation, he has filed the charge sheet. As the plea of the accused was total denial, the trial was held during which the prosecution has examined P.Ws.1 to 12 and got marked Exs.P.1 to P.9. The prosecution has also produced M.Os.1 to 4. The accused has not examined any witness in support of his defence, but marked Ex.D.1.

4. On appreciation of the oral and documentary evidence, the lower Court has found the appellant guilty of the offence with which he was charged with and sentenced him as stated above.

5. Mr. S. Surender Reddy, learned counsel for the appellant, has submitted that the case of the prosecution is based on circumstantial evidence and that the prosecution failed to prove any motive for the appellant to kill his own wife. He has further argued that the evidence of the prosecution witnesses was sketchy, ambiguous and inconsistent and therefore the appellant was not liable to be convicted based on such evidence.

6. Opposing the above submissions, Mr. Posani Venkateswarlu, learned Public Prosecutor, argued that the appellant developed suspicion of illegal contact between his wife and P.W.6 and this suspicion has led the appellant to resort to kill his wife. Though there were no eyewitnesses to the incident, the circumstantial evidence brought out by the prosecution through P.Ws.1, 2, 3, 6 and 10 proved the guilt of the appellant beyond all reasonable doubts and therefore

the lower Court has rightly convicted the appellant and imposed the sentence of imprisonment for life.

7. Having regard to the submissions of the learned counsel for the respective parties, the point that arises for consideration is whether the prosecution has proved the guilt of the appellant beyond reasonable doubt.

8. In a case based on circumstantial evidence, motive plays an important role. The case of the prosecution is that the appellant developed suspicion over the conduct of his wife towards P.W.6, who allegedly used to give money to the appellant whenever the latter needed and also to pay for his works. In this connection, the evidence of P.W.6 is very relevant. The Police examined P.W.6 and recorded his statement on 18.07.2008 during which he has stated that he is a resident of Madhuranagar, Vijayawada, that he is a mason and doing mason and marble works, that he knew the accused, as he was working under his control for one-and-a-half years prior to the incident, that the accused, who was also doing mason and marble works, along with his wife and children, was residing at Madhuranagar, and that as per his instructions the accused was not attending duties regularly and as such whenever there was requirement, he was going to the house of the accused to call him for works and was also giving money due to him at his house whenever there was delay in payment of amount. On 09.07.2008 he went to the house of the accused at Chittinagar (to which place they shifted their residence from Madhuranagar) and asked him why he was not coming to work and the accused replied that he will come to work on the next day, but he has not attended the work as stated by him, that he went to the house of the accused in the evening hours and spent one or two hours there and that again when he visited the house of the accused after three days he was informed that the wife of the accused died and the accused was absconding. In his cross-examination he has admitted that he has not stated to the Police that the accused was working under him for about one-and-a-

half years and as such he was going to the house of accused and used to call him for the work. He has also admitted that he has not stated to the Police that he has spent one or two hours with the accused at his house three days prior to the incident. He has denied the suggestion that the accused did not reside at Chittinagar at any point of time. The most crucial suggestion put to the witness was he has developed illicit intimacy with the wife of the accused and therefore he has killed her on 10.07.2008 and that he was deposing falsely against the accused, which suggestion was, of course, denied by the witness. The case of the prosecution that the accused has killed his wife on developing suspicion that she had illicit intimacy with P.W.6, received a strong support from the suggestion made by the defence itself that P.W.6 has illicit intimacy with the wife of the accused. Thus, it is the admitted case of the defence that P.W.6 had illicit intimacy with the wife of the appellant and from the evidence of P.W.6, it is clear that he used to visit the house of the accused frequently in connection with mason and marble works being attended to by him. Therefore, there was every possibility of the accused suspecting the character of his wife and developing strong motive to kill her. On the basis of this evidence, we find no merit in the submission of the learned counsel for the appellant that the prosecution has failed to prove the motive.

9. We have to now examine whether the prosecution has placed sufficient evidence to drive home the guilt of the appellant beyond all reasonable doubts.

P.W.1 is the owner of the house, a portion of which was let out to the family of the accused on rent. She has deposed that the deceased was residing in her house as a tenant for one month before her death, that the deceased was blessed with a daughter and a son, and she was a servant maid and that her husband was also coming to the house, but she has not seen him personally. She has further

stated that she does not know whether the accused and the deceased were living amicably and there were any strained relations between them. She has further deposed that about one year and four months back, she went to duty, that at 9.00 a.m., her daughter called her on phone and informed that the tenants were quarrelling in a loud voice and asked her to return home. That half-an-hour thereafter she went home, found the deceased lying in front of the door, went near and found her dead, and that immediately thereafter she gave the report. That the children of the deceased were in a nearby temple from where the witness has brought them back to her house. That the children told her that their father instructed them to stay at the temple. With the permission of the Court, the prosecution has cross-examined the witness, as, her evidence varied with the statement allegedly recorded by the Police. In her cross-examination by the prosecution, she has deposed that she has stated to the Police that on the date of the incident the deceased and her husband picked up a quarrel and scolded each other. That she has noticed an injury on the neck of the deceased and stated the same to the Police and that she has also stated to the Police that the husband of the deceased might have killed her as, on that day only two members were present in the house. In her cross-examination by the defence, she has deposed that the report was drafted by the Police to her dictation and she signed the same, and that she has not stated in her report that her daughter informed her on phone regarding the quarrel between the deceased and the appellant, asking her to return home, though she has stated the same in her statement under Section 161 of CrPC. She has further stated that she has not stated regarding the marks on the neck of the deceased, in her report. She has denied the suggestion that she has deposed falsely against the accused only with an intention to implicate him in the case. In the re-examination, the witness denied the suggestion that no report was drafted by the Police, but she has got drafted the report by somebody else and presented to the Police in the

Police Station. A perusal of Ex.P.1 - report shows that there are embellishments in her statement under Section 161 of CrPC and in her evidence given as P.W.1. In Ex.P.1, she has stated that her daughter has informed her that a loud quarrel between the accused and the deceased has taken place, that the accused might have killed the deceased and that she has injury on her neck. Whether these embellishments have any bearing on the case of the prosecution depends upon the other evidence adduced by the prosecution.

10. P.W.2 is an auto-driver and is the brother of the deceased. He has deposed that the deceased was coming to his house in Nellore during festivals and used to state that the accused was picking up quarrels with her on suspicion and she was also requesting him on phone to come and admonish her husband. That on 10.7.2008 he has received an intimation regarding the death of his sister and when he went to the Government Hospital and saw the dead body, he found marks on her neck suggesting that she might have been strangled with an yellow thread, that he has also noticed yellow thread with Rudhrakshas tied to her neck and that they were seized in his presence. In his cross-examination, he has denied the suggestion that he has stated to the Police that the accused was not giving money in the house and as such both of them were picking up quarrels with each other. This portion of his statement given to the Police is marked as Ex.D.1. P.W.2 has admitted that the appellant was suspecting the deceased.

11. P.W.3 is the co-tenant of the appellant and the deceased. She has deposed that the deceased died on 10.7.2008 in the morning. She has further deposed that on that day the accused and the deceased picked up quarrel and they closed the doors, and she went to the owner's house and informed the same to the daughter of the owner (P.W.1) who stated that her mother was not in the house and then the witness went back to her portion. That after some time, the accused called the witness and stated to her that his wife was not

feeling well and when she peeped into the house she found one door was closed and another was opened and the deceased lying on the floor. That as she was afraid, she went to the ground floor and telephoned to her husband, and he asked her to go to her mother's house and accordingly, she went to her parents' house. She has further stated that she has also noticed the marks on the neck of the deceased. In her cross-examination, the witness stated that they have joined as tenants in the house on 04.06.2008 and two days later the accused and the deceased occupied another portion on 06.06.2008. She has denied the suggestion that the accused did not join the house either along with the deceased or even afterwards at any point of time. She has added that the accused came to their house twenty days after the deceased joined, and shown his son, who stated that the accused is his father. The witness denied the suggestion that she did not reside as a tenant in the adjacent portion, where the deceased lived, and also that the accused has not informed her that the deceased was not feeling well and she has not seen the deceased while lying on the floor.

12. P.W. 4 is the sister of P.W.1. She has stated that on the day of the incident, her sister's daughter, Bhavani, came to her house at about 7.30 a.m. and informed her that a quarrel took place in the house of the tenants and she was afraid, and as such, she went along with her sister's daughter to their house immediately and that by that time P.W.1 was not in the house. That by the time P.W.4 went to the place of occurrence, the accused was coming through the steps hurriedly, that when she asked him as to what happened, he has not answered and left the place, and that she went upstairs and by that time the doors were opened and the deceased was seen lying on the floor. That the neck of the deceased was tied with an yellow thread containing Rudrakshas and there were marks on her neck. P.W.4 further deposed that her sister's daughter telephoned P.W.1, who gave the report, and the Police examined her on the next day when she

went to the Government Hospital along with P.W.1. To a suggestion of the defence, the witness stated that she has not seen the accused while he was coming through the stair-case and on the contrary, she has denied the suggestion that on that day she went to a marriage function for cutting vegetables and she was not in the house, that she was not informed by her sister's daughter about the incident and that she has not gone to the house of the accused or the deceased.

13. P.W.10, the daughter of the accused and the deceased, is a very important witness. She was aged about eight years when the accident has taken place and about nine years when she has given her evidence. On being satisfied with the answers to the questions put by it, the Court has permitted her and has recorded her evidence. She has deposed that the accused is her father and the deceased was her mother, that she has an younger brother by name Vamsi, that her father was a mason and her mother was a servant maid and they were picking up quarrels, that her father was coming in a drunken condition and he used to beat her mother, and that her mother died about one year back and at that time they were residing at Chittinagar. That she knows P.W.6, who was coming to their house for giving money to her father. That on the day of the incident, her father asked her and her brother to get tea from a shop, that by the time they returned, their father was not found and their mother was found lying on the floor and dead and she had an injury on her neck. In her cross-examination, the witness admitted that she has not told the Police that there was an injury on the neck of her mother and that P.W.6 has not given money to her father in her presence. She has further added that her father was coming on and off. She has denied the suggestion that the Police have tutored her. To a question put by the Court, the witness stated that two persons were residing in a room adjacent to the room in which they were residing. She has further deposed that after the death of her mother, herself and her brother were residing with her paternal uncle. She has denied the suggestion that she was deposing falsely at the

instance of her paternal uncle and also at the instance of the Police and that her father did not come to their house while they were residing at Chittinagar.

14. The Doctor who conducted the autopsy over the deceased was examined as P.W.5. He has deposed that on 11.7.2008, he has conducted the postmortem examination between 1.45 p.m. and 3.00 p.m, on the requisition from II Town Police Station, Vijayawada, that he found a ligature mark around the neck of the deceased at the level of upper border of thyroid cartilage passing transversely backwards on both sides of the neck upto the nape of neck where the mark is faint. Hemorrhages present in the sub-cutaneous tissues and haemorrhage present in soft tissue over the thyroid cartilage. He has opined that the said mark is ante mortem in nature. He has further deposed that he preserved viscera to rule out associate poison, that the Forensic Science Laboratory report dt.9.9.2008 shows that no poisonous substance was found, that he gave opinion for cause of death as 'asphyxia' due to ligature strangulation, vide Ex.P.2 post-mortem certificate issued by him and that Ex.P.3 is the chemical analysis report. To the only question put to the witness in the cross-examination he has replied that as per the injury, the ligature marks were found around the neck.

15. From the above discussed evidence, the undisputed facts are that the deceased was a tenant of P.W.1, at Chittinagar, Vijayawada, that she was found dead in the morning hours on 10.07.2008, and that she had two children, including P.W.10, living with her at the time of her death. As per the defence's own suggestion, the deceased had an illicit relationship with P.W.6, who was a co-worker of the accused. An attempt was made by the defence to suggest that he never resided with the deceased at Chittinagar. None other than his own daughter, examined as P.W.10, stoutly denied the suggestion that her father was not coming to their house while they were at Chittinagar. She specifically deposed that he was coming to their house on and off.

Thus, the effort of the defence to show that the accused never visited his wife at Chittinagar was thwarted by the accused's own daughter. Nothing was elicited from her to doubt the veracity of her testimony. Though P.W.10 is a child witness, she stood firmly on her ground. She has deposed that she along with her brother are with their paternal uncle after the death of her mother. It is not as if she along with her brother are under the care of the relatives of her mother's side. Therefore, it is highly improbable that a child, who is in the care of accused's own brother, would have been tutored to depose against her own father. No suggestion was put to her that there was any enmity between the accused and his own brother, under whose care the witness is living. Therefore, we do not find any reason to doubt the veracity of the testimony of P.W.10. Thus, the accused was last seen by P.W.10 on the morning of the day of occurrence. This evidence was amply corroborated by P.W.4, who is no other than the co-tenant of the deceased. She has categorically stated that when she went to the house of the deceased, the accused was coming down through steps hurriedly, while she denied the suggestion that on that day she had gone to a marriage function for cutting vegetables. No suggestion was put to any of the prosecution witnesses to probabalize the reason for them to depose falsely against the accused. P.Ws.1, 3 and 4 are independent witnesses, who had absolutely no axe to grind against the accused to make false accusations against the accused.

16. In the light of the above evidence brought on record by the prosecution, the embellishments in the evidence of P.W.1 in the statement under Section 161 of CrPC and the deposition before the Court referred to above, do not materially affect the case of the prosecution and consequently they are without any significance.

17. The Police have seized M.O.1 thread with Rudrakshas from the body of the deceased, and in Ex.P.2 post-mortem report, the ligature marks around the neck of the deceased were found suggesting that the appellant has used the said thread to strangle his wife. The cause

of the death mentioned in Ex.P.2, namely, asphyxia due to ligature strangulation, further proves the case of the prosecution that the appellant has strangled his wife, as a result of which she died due to asphyxia.

18. Further, if really P.W.6 killed the deceased, being the husband, the appellant would not have kept quiet without approaching the Police and giving a report. The fact that the appellant was absconding immediately after the incident and he was arrested on 10.8.2008, i.e., exactly one month after the death of his wife, itself proves that the appellant having killed his wife absconded fearing his arrest.

19. In a catena of judgments, the Supreme Court held that it is for the accused to explain the incriminating circumstances, if there is clear evidence that he was last seen with the deceased (See *Joseph v. State of Kerala*^[1], *Ram Gulam Chaudhary v. State of Bihar*^[2] and *Sahadevan v. State*^[3]).

In *Naina Mohd., Re.*^[4], it was held that Section 106 of the Indian Evidence Act does not shift the burden of proof in a criminal trial, which is always upon the prosecution and that it lays down the rule that when the accused does not throw any light upon facts which are specifically within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. When the deceased has met with an unnatural death at her house where the accused was last seen with her, the onus lies on him under Section 106 of the Indian Evidence Act to give satisfactory explanation to the incriminating circumstances specifically within his knowledge. The principle in *Naina Mohd., Re* (4 supra), was quoted with approval by the Supreme Court in *State of Rajasthan v. Kashi Ram*^[5]. Applying this principle of law to the facts of this case, this Court has no hesitation to hold that the appellant failed to discharge the onus lying on him to satisfactorily explain as to

the incriminating circumstances under which his wife was done to death.

20. Thus, the prosecution was able to successfully complete the chain of events to prove the guilt of the appellant beyond reasonable doubt and he was rightly convicted and sentenced by the lower Court, as stated above. This point is accordingly answered against the appellant.

21. On the analysis as above, we do not find any reason to interfere with the judgment of the lower Court. The appeal is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

29-02-2016

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[\[1\]](#) (2000) 5 SCC 197

[\[2\]](#) (2001) 8 SCC 311

[\[3\]](#) (2003) 1 SCC 534

[\[4\]](#) AIR 1960 Mad.218

[\[5\]](#) (2006) 12 SCC 254