

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

CRIMINAL APPEAL NO.639 OF 2010

DATED:24-02-2016

Between:

Jampana Gopala Krishna ... Appellant

And

State of Andhra Pradesh
Rep. by Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Ms. Naseeb Afshan

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

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

This criminal appeal arises out of judgment, dated 24.12.2009, in Sessions Case No.3 of 2009, on the file of the II Additional Sessions Judge, Guntur, whereby he has convicted the appellant for the offence punishable under section 302 of IPC and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- in default, to suffer simple imprisonment for a period of three months.

The case of the prosecution in brief is that the deceased-Tadi Lakshmi Narayana @ Lakshmi Vandas @ Narayan Prabhu was priest-cum-commander of Iskon Temple of Undavally. P.W.1 is the cook of the Temple, P.W.2 is the priest and the husband of P.W.1, and P.W.3 is the daughter of the accused through his first wife. As the accused prohibited use of onion and non-vegetarian food in his house and joined ISKCON Temple, his second wife has left him. On 17.01.2008 at about 3 a.m. the accused woke up P.W.3 and performed Harathi in his house. Thereafter, he took his daughter to another room for performing Japam. All of sudden he fell on his daughter and the latter pushed her father and ran away to another room. Subsequently, P.W.3 along with her brother came to ISKCON temple in a bus and the accused followed them on a bicycle. P.W.3 informed P.W.1 about the incident. P.W.1 in turn reported the incident to the deceased. After discussion among them, P.W.1 and the deceased decided not to disclose the incident to anybody till the arrival of the temple president, Murali Mohan Dass. The deceased and the accused were sleeping in the same room, i.e., room No.2. At about 3 a.m. on 20.01.2008, P.W.10, who is another priest, went to room No.2 to wake up the deceased for performing rituals and he found the room bolted from outside. On suspicion, he opened the door and found the room being

dark with no lights and he heard murmuring of the deceased. He then switched on the lights and saw the deceased in a pool of blood. He found the dhoti of the deceased also in the pool of blood and the deceased raising cries. On hearing him, all the inmates of the temple came there at about 4 a.m. before the arrival of the ambulance. P.W.10 then informed the incident to P.W.1 over phone and thereafter he along with other devotees shifted the deceased to NRI hospital, Chinakakani. By that time, the deceased was in unconscious condition. P.W.6 - Doctor performed cardiopulmonary resuscitation and at about 4.45 a.m the deceased succumbed to injuries. P.W.6 - Doctor issued Ex.P3 death intimation of the deceased to police.

On receipt of the information passed by P.W.10, P.W.1 rushed to the hospital, noticed the dead body, enquired with P.W.2 and other devotees, and filed a report before P.W.11 - Sub-Inspector of Police, who registered the same as Crime No.21 of 2008 of Tadepalli Police Station, Guntur District for the offence under section 302 of IPC and submitted the original FIR together with report of P.W.1 to the Additional Munsif Magistrate, Mangalagiri and copies of express FIRs to all officers concerned. Thereafter, P.W.12 - Inspector of Police took up investigation, during which, he has examined P.W.1 and recorded her detailed statement, visited the scene of offence in the presence of P.Ws.7 and 9 and seized the material objects under cover of mediatorsnama. P.W.12 has also visited NRI hospital and held inquest over the dead body of the deceased in the presence of P.Ws.7 to 9 under cover of Ex.P5-inquest report. In continuation of the investigation, P.W.12 also examined L.Ws.8 to 11, 13 to 16 and recorded their statements in Telugu. On the requisition given by P.W.12, P.W.5 - Doctor conducted autopsy over the dead body of the deceased and issued Ex.P2 - post mortem certificate, opining that the deceased died due to cardio respiratory arrest and due to head injury caused by a sharp object. On 09.02.2008 P.Ws.2 and 8 apprehended the accused while he was in the premises of Goddess Kanakadurga

Ammavaru, Vijayawada and P.W.8 recorded the extra-judicial confession of the accused and both P.Ws.2 and 8 produced the accused before P.W. 12 - Inspector of Police and handed him over the extra judicial confession statement of the accused along with covering letter. P.W.12 re-examined P.Ws.2 and 8 and recorded their detailed statements, secured the presence of P.Ws.4 and 9 and in their presence, basing on the confession of the accused, seized M.Os.12 and 13 blood stained iron Badisa and scissor from the bushes of japan babul trees situated on the northern side of PWD workshop under cover of separate mediatorsnama (Ex.P9), duly attested by P.Ws.4 and 9. P.W.12 produced the accused before the Court and sent the material objects seized to the Regional Forensic Science Laboratory, Guntur and obtained analysis report (Ex.P13), and after completion of the investigation, he has filed the charge sheet.

In support of its case, the prosecution examined P.Ws.1 to 12 and marked Exs.P1 to P13 and M.Os.1 to 13. On behalf of defence, no oral evidence was adduced and Ex.D1 was marked. Based on oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

At the hearing, Ms. Naseeb Afshan, learned counsel for the appellant, assailed the correctness of the judgment of the lower court by arguing that the entire case of the prosecution is based on circumstantial evidence and that therefore, establishment of motive is a *sine quo non* and that the prosecution miserably failed in this regard. She has further argued that there is nothing on record to show that the appellant tried to molest his own daughter and that a strong reason existed for the appellant to kill the deceased, who is a priest and commander of ISKCON temple. She has taken us through the oral and documentary evidence and submitted that a careful scrutiny of the same, the inevitable conclusion to be drawn is that the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

Opposing the above submissions of the learned counsel for the

appellant, Mr. Posani Venkateswarulu, learned Public Prosecutor, submitted that the case of the prosecution is rested on the following aspects, viz., the last scene theory, the extra judicial confession, motive and medical evidence, besides the appellant's own admissions made during his examination under section 313 of CrPC.

We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

As argued by the learned counsel for the appellant, in a case rested on circumstantial evidence, motive plays a vital part. We have to therefore see whether the prosecution has established sufficient motive.

P.W.3 is none other than the own daughter of the accused. She has fully supported the case of the prosecution in all respects, including the motive part of the case. She has categorically deposed that on 17.01.2008 at about 3.00 a.m she and the accused woke up to perform Harathi in her house, and after performing Harathi, the accused took her to another room to perform Japam, and both of them sat on the floor for doing Japam. She further deposed that the accused suddenly fell on her and she pushed him and went into another room. She further deposed that on the same day she along with her brother came to the said ISKCON temple in a bus and the accused followed them on a bicycle and she informed P.W.1, a cook in the temple about the misbehaviour of her father (accused) and P.W.1 informed her that he will counsel the accused. This evidence of P.W.3, which remained unshaken during her cross-examination, would lay a strong foundation for the prosecution case regarding motive.

Indeed, in the extra judicial confession (Ex.P6), which was reproduced by the Court below in its vernacular language, the appellant himself given a graphic description of events commencing from his trying to commit molestation against his daughter till he has appeared before P.W.8, who has recorded this statement. The accused has stated in his statement that after his misbehaviour with

the his daughter, the latter has gone to the ISKCON temple and he requested P.W.1 to send his daughter with him after expressing his apologies for his misdemeanor, and on his coming to know about the incident, the deceased has severely chastised him and informed him that the temple President will visit the temple on 20.02.2008 and after discussing all the facts with him, they will take a decision as to sending P.W.3 with him or not. The deceased has instructed the appellant not to go anywhere till 20.01.2008 and on the night of 19.01.2008 the deceased has slept by the side of the accused in the same room. The accused has further stated that as he was worried that on the following morning the President of the temple may handed over him to police by registering a case, he decided to kill the deceased. This statement is further corroborated by his own answers given during his examination made under section 313 CrPC.

The following questions and answers in the statements recorded under Section 313 of CrPC are relevant in this context.

“Q.5. PW1 further deposed that Chitra Rey informed the incident to her, and she informed the same to Lakshmi Van Das (deceased) commander-cum-priest of the temple, who in turn informed that the said matter will be discussed after arrival of the president of the said temple. What do you say?

Ans. Do not remember.

Q.6. PW1 further deposed that you confessed to her about the said mistake and asked her not to reveal to others. What do you say?

Ans. I told that mistake was about to happen.

Q.15. P.W.10 further deposed that you and the deceased slept in room No.2 of first floor of Iskcon Temple on the night of 19.01.2008. What do you say?

Ans. True.”

The answer given to question No.6 is sufficient to hold that the accused has admitted his misbehaviour with his own daughter, P.W.3. Through answer to question No.15, the accused has categorically admitted that on the fateful night, the accused and the deceased slept in room No.2 of first floor of ISKCON temple. From this admission, it is safe to apply the ‘last seen theory’, being the only person with the deceased in the room, the accused had exclusive knowledge of all the

events that have taken place on the night of 19.01.2008. Therefore, the burden lies on the accused to explain as to who, if not himself, might have killed the deceased, under Section 106 of the Indian Evidence Act. In this context, the defence has marked Ex.D.1, a contradiction between the statement under Section 161 of CrPC and the evidence of P.W.4. In the statement under Section 161 of CrPC, P.W.4 has allegedly stated that he was residing in room No.2 along with two others. However, in his deposition, the said witness has stated that he was staying along with other two persons in room No.3 while the accused and the deceased stayed in room No.2. In his cross-examination P.W.4 has stated that he did not state to the Police as in Ex.D.1. This contradiction pales into insignificance, as it is not the case of the accused that there were others along with himself and the deceased in room No.2 on 19.1.2008, as per Ex.P.6, his statement under Section 313 of CrPC.

Coming to the medical evidence, Ex.P.2, post-mortem certificate reveals multiple injuries on the body of the deceased which include incised as well as chop injuries. P.W.5, who conducted autopsy over the deceased, deposed that the deceased could have died of cardio respiratory arrest due to head injury caused by a sharp object. In his cross-examination, she has stated that the external injuries mentioned in Ex.P.2 can be caused by any single sharp edged object. The Police have recovered M.Os.12 and 13, namely, adze (baadisa) and scissors, and under Ex.P.9, mediatornama, P.W.9, one of the mediators, was examined to prove the recovery. Nothing which would discredit his testimony could be elicited from his cross-examination. Through Ex.P.2, post-mortem certificate, and the evidence of P.W.5, the prosecution was able to prove that the injuries on the body of the deceased could be caused by M.Os.12 and 13.

Learned counsel for the appellant has made a vain attempt to convince us that as there was some dispute relating to the accounts of the ISKCON temple, some persons planned to kill the deceased, as, if

he is alive the true accounts pertaining to the temple will be exposed. This defence is not reflected in the stand taken by the accused in the statement under Section 313 of CrPC. Except a feeble suggestion made to P.W.2 in this regard, no evidence whatsoever has been adduced by the defence to probabalize such theory.

Though there is no direct witness to the offence committed by the accused, the prosecution could establish every link in the chain of events pointing to the guilt of the accused. More than anything else, the evidence of P.W.3, who is no other than own daughter of the accused, remained unshaken. In ordinary course of human conduct, a person like P.W.3, a girl of 15 years age, and who has also lost her mother, would not depose against her own father so as to send him to jail, as she would not be unaware of the consequence that in such an event she would lose the only support she was having and become an orphan. Except a suggestion put to her that the management of the ISKCON temple promised herself and her brother to provide with better future, which is denied by P.W.3, no evidence is produced by the defence in support of this suggestion. If the accused has not attempted the most abhorrent act against his own daughter, a situation would not have arisen where he would have thought of killing a priest of a temple, and P.W.3 would not have gone to the extent of exposing her own father, who has indulged in commission of the heinous crime.

In the light of the above discussion, this Court is of the opinion that the prosecution has succeeded in bringing home the guilt of the appellant beyond reasonable doubt and the lower Court has rightly convicted and sentenced him for the offence punishable under Section 302 of IPC.

Hence, the appeal fails and the same is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

24-02-2016

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