

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1079 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 30.11.2009 in Sessions Case No.324 of 2008, the learned I Additional District & Sessions Judge, West Godavari at Eluru, convicted the sole accused of murdering Pemmadi Ramayamma by beating her on the head with a sanikala stone (a kitchen implement), thereby committing an offence punishable under Section 302 IPC and sentenced him to life imprisonment and to pay a fine of Rs.1,000/- or undergo simple imprisonment for two months, in default thereof. For the lesser offence under Section 201 IPC, for which he was also convicted, the sole accused was sentenced to rigorous imprisonment for two years along with payment of a fine of Rs.500/- or undergo simple imprisonment for one month, in default thereof. Aggrieved thereby, the sole accused is in appeal before this Court under Section 374(2) CrPC.

The appellant/accused is the son-in-law of Pemmadi Ramayamma, the deceased. He, along with the deceased and two of his three children, were the tenants in a house at Jangareddigudem, West Godavari District, belonging to the sister of Bandela Ravi (P.W.2). Durga, the wife of the accused and the youngest daughter of the deceased, was employed at Hyderabad. The marriage of the accused with her was performed about 13 years prior to the death of Pemmadi Ramayamma. The case of the prosecution was that, on 13.07.2007 at about 10:30 PM, the accused had an altercation with his mother-in-law, Pemmadi

Ramayamma, and in that process he picked up a sanikala stone and hit the deceased on her head above the right temporal region, whereby she sustained a grievous bleeding injury and collapsed. The accused was stated to have concealed the body of the deceased in an abandoned underground water storage tank situated in front of the rented house and closed the cement lid of the tank. The body was detected, owing to the foul smell emanating therefrom, on 17.10.2007 whereupon information was given to the police setting in motion the process of criminal law. Upon completion of the investigation, the police laid a charge sheet and charges were framed against the accused under Sections 302 and 201 IPC.

He however denied the charges and claimed to be tried.

At the trial, the prosecution adduced oral and documentary evidence. P.Ws.1 to 11 were examined by the prosecution and 12 exhibits were marked. Case properties were marked as M.Os.1 to 3. The defence did not choose to lead any evidence.

The Village Revenue Officer, Jangareddigudem (P.W.1), deposed before the Sessions Court that Bandela Ravi (P.W.2) informed him that he had found the body of the deceased at about 2:00 PM on 17.10.2007. P.W.1 thereupon prepared Ex.P1 report and presented the same to the Assistant Sub-Inspector of Police, Jangareddigudem (P.W.8), at about 5.00 PM. According to P.W.1, after P.W.2 informed him about the body of the deceased lying in the storage tank, he and P.W.2 went to the said storage tank, saw the body of the deceased and thereafter he prepared Ex.P1 report and then proceeded to the police station and presented it at 5:00 PM. On the next day, the Inspector of Police, Jangareddigudem (P.W.11), P.W.1 and Shaik Mahaboob Vali (P.W.6) went to the storage tank at about 8:00 AM and P.W.11 got the body of the

deceased removed from the storage tank with the help of two coolies. P.W.1 drafted the scene observation report (Ex.P2) and P.W.11 held inquest proceedings over the body of the deceased from 10:30 AM to 1:30 PM. Ex.P3 is the inquest report, which was also drafted by P.W.1. P.W.1 stated that on 23.10.2007, P.W.11 arrested the accused at the water tank of Ramachandrapuram Village and at that time, P.W.1 and P.W.6 were both present. Ex.P4 is the admissible portion of the mediators report drafted by P.W.1 at that time. The accused was stated to have taken them to the bushes near his house, where he brought out a sanikalarayi (sanikala stone) and handed over the same to P.W.11. The said stone (M.O.1) was seized under Ex.P5 mediators report.

In his cross-examination, P.W.1 confirmed that P.W.2 came to him on 17.10.2007 at 3:00 PM. He further stated that there was a little water in the underground tank but it was not in usage. He said that the said tank was situated adjacent to the building of the deceased. He further stated that Ex.P1 was drafted by him in his office immediately after information was given to him by P.W.2. He said that on 18.10.2007, P.W.11 sent a constable requesting him to come to Jangareddigudem police station and thereupon, he went along with the constable to the police station. He also stated that he took P.W.6 along with him to the police station. He confirmed that the storage tank was covered by a cement slab and denied the suggestion that he did not mention so in Ex.P1 report or in Ex.P2 scene observation report. He confirmed that P.W.11 had not examined anybody from the neighbourhood of the scene of offence in his presence. He stated that stones like M.O.1 were available in the market and that M.O.1 appeared to be unused. He denied the suggestion that the deceased may have fallen into the storage tank

due to an accidental slip and died. He confirmed that by the time they saw the dead body, it was in a highly decomposed state.

Bandela Ravi (P.W.2) stated that he was residing in the house of his sister, Kakarla Sarala, at Jangareddigudem and that the said house was in two portions. He stated that his sister was in Kuwait and that he resided in one portion, while in the other portion, the accused and the deceased, who was his mother-in-law, and two children of the accused, used to reside. He disclosed that the wife of the accused was employed at Hyderabad and used to visit the accused now and then. According to P.W.2, the accused used to come to the house in a drunken state and there used to be frequent quarrels between him and the deceased. As to the fateful day, 13.10.2007, he stated that there was a quarrel between the accused and the deceased between 8:00 PM and 10:00 PM on that day and that he did not see the deceased on the next day. He further stated that in the evening of 14.10.2007, he asked the accused about his mother-in-law and he told him that she had gone to her relations house and would return after a few days. He said that on 16.10.2007, he found a bad smell at their building but did not try to find out the cause as he thought that a dead rat may be the reason therefor. He further stated that, on 17.10.2007 at about 2:30 PM, he came to his house for lunch but could not eat due to the increased bad smell. He found the portion of the accused locked and upon removing the slab of the opening of the water tank in front of the house, he saw the body of the deceased. He said that the said water tank was not in use but there was a very small quantity of water at the bottom. According to him, as they were not using the tank, they were not opening the cement slab on it. He said that after finding the body of the deceased, he

went to the Village Revenue Office and informed P.W.1, who came along with him to the storage tank and saw the body. P.W.1 then gave a report to the police. According to P.W.2, there is no chance of anyone falling into the tank accidentally.

In his cross-examination, P.W.2 said that normally he left his house at about 7:00 AM with his auto and would return at about 11:00 PM. He confirmed that on 17.10.2007, he informed P.W.1 about the body of the deceased in the tank at 3:00 PM. He stated that he, along with P.W.1, came to the tank from the office of P.W.1 at about 4:30 PM and then P.W.1 took him along with him to the police station. He further confirmed that several people in the neighbourhood of his house were searching for the cause of the bad smell and when he opened the small cap over the tank and saw the body, all those people gathered there. He admitted that he did not state before the police that on 14.10.2007, he had questioned the accused about the whereabouts of his mother-in-law. He also admitted that he did not state before the police that the accused used to come home in a drunken state and quarrel with her. He further admitted that he did not state before the police that on 13.10.2007, he returned home between 8:00 and 10:00 PM. He denied the suggestion that the water tank in question was never covered with a cement slab and that the deceased could have fallen into the tank by accidental slip and died. He denied the suggestion that the accused had gone along with his children on 11.10.2007 to Tadepalligudem in relation to his work and returned only after receiving a telephone message from him about the death of the deceased. P.W.2 volunteered that he never telephoned the accused and denied the suggestion that he was foisting a false case against the accused to avoid any problem

for himself. He denied the suggestion that the accused never quarreled with his mother-in-law and that she was being looked after by the accused as she was not being cared for by her own children. He stated that the depth of the tank in question was 8 to 10 feet and not 15 to 20 feet.

Talladi Bhaskara Durga Prasad (P.W.3), the older son of the accused, was allowed to depose after the Sessions Court satisfied itself as to his capacity to give evidence. He stated that he had a sister, Nagalaxmi and a brother, Siva. He confirmed that his mother was living at Hyderabad and that he lived with Bharathi, his paternal grandmother, at Buttaigudem Road in Jangareddigudem. He further stated that his sister, Nagalaxmi, his brother, Siva, and his maternal grandmother were living along with his father in the same village but in a separate house. The distance between the two houses was stated to be about 2 Kms. He said that his father used to cook food as his maternal grandmother had defective vision. He said that he was with his paternal grandmother since his birth. As to the death of his maternal grandmother, he said that about two days prior thereto, his father brought his brother and sister to the house of his paternal grandmother and left them there and went away for his work. P.W.3 further stated that when his maternal grandmother died, his maternal aunt, Kanakam (P.W.9), took him, his brother and his sister from her house to the house of the accused. In his cross-examination, P.W.3 stated that though he lived in the house of his paternal grandmother, he used to visit his father now and then. He stated that his father took him, along with his brother and sister, from his house and left all three of them in the house of his paternal grandmother prior to the incident and that, at that

point of time, his maternal grandmother was in the house. Three days after his father left them in the house of the paternal grandmother, he said that they came to know about the death of the maternal grandmother. He further stated that the tank in which she died did not have any cover.

S.Nagamani (P.W.4) is the older daughter of the deceased. She confirmed that her sister, Durga, the wife of the accused, was at Hyderabad and that the accused along with two of his children resided with her mother at a house in Jangareddigudem on rent. She stated that four days prior to the death of her mother, she had gone to visit her mother and the accused came home in a drunken state and abused her mother questioning her as to why she was in his house when she could go and live with her son. According to P.W.4, the deceased lived with the accused as she had affection towards his children and their mother, her youngest daughter. She further stated that the accused telephoned her brother at Chennai about the death of the deceased and in turn, her brother informed her. The accused was stated to have told her brother that the deceased fell in a well and died. She further stated that at the time of the inquest, the children of the accused informed the people present that the accused had beaten their grandmother with a sanikalarayi (sanikala stone) and therefore, she died.

In her cross-examination, P.W.4 admitted that her mother was unable to do any work on account of old age and that she never stayed with her for more than a few days. She also admitted that the accused looked after the welfare of her mother. She denied the suggestion that she had not gone to the house of the accused four days prior to the death of her mother and that the accused did not come home in a drunken state and abuse her

mother. She admitted that the marriage of the accused with her sister was a love marriage and owing to the same, they did not allow them to visit their house. She further admitted that it was true that they were not on visiting terms. She stated that her sister, Durga, did not come when her mother died and her whereabouts were not known. She stated that Durga did not see the body of the deceased and it was only a month after the death of her mother that Durga came to P.W.4's house and took her children, Nagalaxmi and Siva, who were with P.W.4 at that time.

Bokka Venkateswarulu (P.W.5), one of the coolies who removed the body of the deceased from the underground tank, said that there was no water in it at that time. In his cross-examination, he stated that the bottom of the tank was hard and if anybody fell into it head down, he or she may die due to the hardness of the surface.

Sk. Mahaboob (P.W.6) was the photographer who took pictures at the tank at the request of the police and participated in the investigation. Ex.P6 is the set of three photos with negatives.

Dr. B.Ravi Kumar, Civil Assistant Surgeon, Government Hospital, Jangareddigudem (P.W.7), conducted the post-mortem examination of the body of the deceased on 18.10.2007 at about 1:45 PM. Ex.P7 is the post-mortem examination report. He certified that the body was in a decomposed state and he found depressed fractures of the right temporal bone and right zygomatic bone. He confirmed that the time of death would have been 5 to 7 days prior to the post-mortem examination and that the cause of death, to the best of his knowledge and belief, was due to the injuries to the temporal bone and the zygomatic bone. He stated that it is possible to inflict the said injuries with M.O.1 sanikala

stone. He denied the suggestion that the said injuries could have been caused by a fall due to a slip into a well. P.W.7 further stated that on 23.10.2007 at about 10:30 PM, on the requisition of P.W.11, he examined the accused and found a scratch mark on his right arm which was aged about 7 to 14 days prior to the examination. He said that a blackish scab had formed on the said injury which was simple in nature and it could have been caused due to a struggle with another person. Ex.P8 is the wound certificate. In his cross-examination, P.W.7 denied the suggestion that it would be possible to sustain the injuries mentioned in Ex.P7 post-mortem examination report due to a fall up to a depth of 10 feet if the head touched either the bottom or the walls of a well. He however admitted that the said injuries could have caused unconsciousness and had there been timely treatment, the deceased could have survived.

Tadi Kanaka Lakshmi (P.W.9) is the other daughter of the deceased. She stated that her mother used to live with the accused, while her sister, his wife, used to live at Hyderabad. She stated that during her life time, her mother never said anything against the accused to her. In her cross-examination, P.W.9 admitted that the accused looked after the welfare of her mother.

Pemmadi Srinu (P.W.10) is the son of the deceased. He stated that he resided at Tiruvattur, Chennai, and that his mother used to stay with the accused at Jangareddigudem. He admitted that his sister, the wife of the accused, lived at Hyderabad. He further stated that on 17.10.2007, the accused informed him over the phone that his mother had fallen into a tank accidentally and died. He said that he then came to Jangareddigudem and saw his mother's body in the tank. According to him, after the obsequies of

his mother, he took Nagalaxmi and Siva with him to Chennai and they were there with him for some time. Thereafter, his sister, Durga, the wife of the accused, was stated to have come and taken them away with her. In his cross-examination, P.W.10 admitted that his own marriage took place about ten years prior thereto and after his marriage, his mother never lived with him. He also admitted that the marriage of the accused with his sister, Durga, was a love marriage, but denied the suggestion that after the marriage, he never allowed them to visit their house.

In the light of the evidence adduced, it is clear that Pemmadi Ramayamma met with an untimely demise. However, whether her death was homicidal has to be established. It is relevant to note that in Ex.P3 report relating to the inquest proceedings held on 18.10.2007 at 10:30 AM, the children of the accused, Nagalaxmi and Siva, were shown as eyewitnesses. This is directly in contradiction with the evidence of P.W.3, the elder son of the accused, who said that he along with his brother and sister were brought to the house of their paternal grandmother by his father three days prior to their being taken to see the dead body of their maternal grandmother. P.W.3 also stated that on that day, he, his brother and his sister were taken to see the body of the deceased by his maternal aunt, Kanakam (P.W.9). Significantly, the prosecution did not choose to elicit any evidence from P.W.9 on this aspect and no question was put to P.W.9 as to the veracity of P.W.3's claim that she had taken the children to see the body of the deceased on 18.10.2007. Even more crucial is the lapse that the paternal grandmother, Bharathi, did not even find mention in the list of witnesses and the police never even examined her to ascertain as to whether the children, Nagalaxmi and Siva, were in

her custody at the relevant point of time along with P.W.3. Even going by the inquest proceedings, Nagalaxmi and Siva, who were cited as eyewitnesses therein, did not actually witness the so called altercation between the accused and the deceased. According to the inquest report (Ex.P3), the children woke up on the next day morning and questioned their father as to the whereabouts of their maternal grandmother and he was stated to have told them that she had left. However, the very presence of the children at that time is open to question in the light of the contradictions and lapses referred to *supra*.

Another crucial aspect which completely undermines the prosecution's case is that Ex.P3 inquest proceedings record that the deceased was killed by attacking her with a sanikala stone. In the absence of the so called eyewitnesses who, even according to the prosecution, did not witness the alleged attack on the deceased, it is inexplicable as to how a conclusion could have been arrived at during the inquest proceedings that the attack on the deceased was with a sanikala stone. It is not as if a sanikala stone was found at the scene of the offence whereby such a conclusion could have been recorded in the inquest proceedings. Even more strange is the fact that the inquest proceedings further record that the deceased scratched the accused whereupon he hit her on the head with a sanikala stone. There is no mention in the inquest report (Ex.P3) of any skin being found under the nails of the deceased's fingers. There is no finding to this effect even in the post-mortem examination report (Ex.P7). The finding in Ex.P3 inquest report to this effect therefore gives rise to the question as to how the deceased scratching the accused could have been recorded in the absence of eyewitnesses and long before the

accused was found and subjected to physical examination by a doctor. The wound certificate (Ex.P8) furnished by P.W.7 is therefore rendered doubtful and it appears that the entire investigation was engineered from the stage of the inquest proceedings itself. It is also to be noted that M.O.1 sanikala stone was unused as per P.W.1 but there is no explanation forthcoming as to this aspect. Further, there is no evidence of the corresponding stone implement for the sanikala stone being found in the house of the accused. The Forensic Science Laboratory report (Ex.P12) notes the presence of human blood on M.O.1 sanikala stone, but again, there is no identification of the blood group. Apart from these lapses, the manner in which the investigation was manipulated from the start leads to suspicion as to the evidence in relation to M.O.1 sanikala stone.

The very presence of the accused at his house on 13.10.2007 is rendered doubtful given the testimony of his older son, P.W.3, to the effect that the accused left all his three children at the house of their paternal grandmother and went away for his work. When the police did not even investigate the truth of this statement by examining the paternal grandmother, Bharathi, the benefit of doubt in this regard would invariably have to be given to the accused. The evidence given by the son and daughters of the deceased, except P.W.9, is open to doubt. The older daughter (P.W.4) and the son (P.W.10) contradicted each other as regards who had the custody of the children, Nagalaxmi and Siva, after the death of the deceased. P.W.4 stated that she had the children and that one month after the death of the deceased, their mother, Durga, came to her house and took them away, while P.W.10 said that he had the children with him at Chennai and that Durga,

their mother, came and took them away. This contradiction between their testimonies gives rise to suspicion as to the truth of their other statements and the same would therefore have to be viewed with great care and caution.

P.W.4 stated on the one hand that owing to the love marriage between the accused and her sister, Durga, there was a fall out in their relations and that they were not on visiting terms. Having said so, she claimed that four days prior to the death of her mother, she went to visit the residence of the accused. This claim, on the face of it, is doubtful once it is admitted that there were no visiting terms. Further, P.W.4 said that on the date of her alleged visit, the accused came home in a drunken state and abused her mother as to why she lived in his house when she could go and live with her son. However, P.W.10, the son of the deceased, admitted that after his own marriage 10 years earlier, his mother never lived with him and that she lived with the accused at Jangareddigudem. If that is so, it is doubtful whether the accused would be picking upon the deceased for living with him even after 10 years. The visit of P.W.4 to the house of the accused four days prior to the death of the deceased is therefore highly unbelievable.

P.W.4 further stated that at the time of the inquest, the children of the accused informed all present there that the accused beat their grandmother with a sanikalarayi and she therefore died. This claim seems to be untrue as no such statement was recorded during the inquest proceedings, though the children, Nagalaxmi and Siva, were cited as eyewitnesses. No statement was recorded in the inquest proceedings to the effect that the children had witnessed the alleged killing of their grandmother.

P.W.9, the other daughter of the deceased, who appears to have been truthful, admitted that during her life time, her mother never said anything against the accused. She also admitted the fact that the accused looked after her welfare. P.W.4 also admitted in her cross-examination that the accused looked after the welfare of her mother. P.W.3, the elder son of the accused, stated to the effect that the accused used to cook for the deceased who suffered from defective vision. This evidence establishes that it was the accused that took care of the deceased and even cooked for her.

Though P.W.2, the occupant of the other portion in the house, spoke of quarrels between the accused and the deceased, there is no corroboration of his statement. None of the neighbours were examined to confirm this. There is no evidence to corroborate P.W.2's claim that he witnessed an altercation between the accused and the deceased on 13.10.2007 between 8.00 PM and 10.00 PM and his presence at that time is also rendered doubtful by his admission that he did not state so before the police and going by the timings usually maintained by him. P.W.11 stated that by the time he reached the scene of the offence at 7:30 AM on 18.10.2007, about 30 persons from the neighbourhood had gathered there. He however did not examine any of them or record their statements. Similarly, no steps were taken to examine any of the people in the neighbourhood to confirm that there was any ill-will between the accused and the deceased.

The case of the prosecution rests purely on circumstantial evidence. Though Nagalaxmi and Siva, the children of the accused, were cited as eyewitnesses in the inquest proceedings, there is no indication of their having actually witnessed anything. In fact, their very presence in the house at that point of time is

open to doubt. In a case resting solely on circumstantial evidence, it is incumbent upon the prosecution to establish a complete, consistent and unbroken chain of events which unerringly point towards the guilt of the accused leaving no room to infer his innocence. In the present case, an alternate version that could possibly emanate from the evidence of P.W.3, the elder son of the accused, is that the accused left his three children with their paternal grandmother and went elsewhere in relation to his work and somehow, the deceased accidentally fell in the tank and met with her death. P.W.3 had also said that the tank had no lid.

As rightly pointed out by Ms. Naseeb Afshan, learned counsel for the appellant, no steps were taken to subject the underground tank to proper examination to find out whether there was any possibility of the deceased sustaining the injuries in question by an accidental fall. Significantly, a suggestion was also put to P.W.2 that the deceased might have met with an accidental death and that he was trying to foist a case upon the accused to protect himself, perhaps because he was the *de facto* landlord.

No doubt, the doctor (P.W.7) denied the possibility of the deceased sustaining the injuries in question by a fall into a well up to the depth of 10 feet, but he admittedly did not examine the underground tank in question and his opinion cannot be acted upon when there was no proper investigation.

The learned Public Prosecutor relied upon 'Medical Jurisprudence and Toxicology (Law Practice & Procedure)', a text book authored by Dr. K.S.Narayan Reddy, Professor of Forensic Medicine, M.R.Medical Colleges, Gulbarga, in relation to falls from heights. However, this opinion of the author was not put to P.W.7, the doctor examined before the Sessions Court. In the light of the

law laid down by the Supreme Court in **SUNDARLAL V/s. STATE OF MADHYA PRADESH**¹ and **BHAGWAN DAS V/s. STATE OF RAJASTHAN**², reference cannot be made by the prosecution to literature or a text book without confronting the expert with such document and seeking his opinion on it. This Court therefore cannot attach any importance to the cited text book opinion.

Though one of the photographs out of the set of three photos (Ex.P6) indicates that the body of the deceased inside the well was lying on the left side with the right side of the head facing upwards, indicating that the deceased may not have hit the right side of her head if she fell into the tank, it is stated by P.W.7 that the injuries in question would not have instantaneously caused death and that the deceased would have been unconscious in the first instance. He further stated that with timely treatment she could have survived also. That being so, the possibility of the deceased moving inside the tank cannot be ruled out.

Further, the fact that P.W.10 stated that it was the accused who informed him over the phone on 17.10.2007 about the deceased falling in the well and meeting with her death accidentally indicates that the accused did not abscond, whereby he could have been arrested later on 23.10.2007, as claimed by the prosecution. Given the findings recorded in the inquest report on 18.10.2007 at 10.30 AM, it is very much possible that the accused was apprehended by the police immediately and it was on the basis of the scratch mark found on his body that the inquest proceedings record, out of the blue, that the deceased scratched him whereby he attacked her with a sanikala stone. There is no

¹ AIR 1954 SC 28

² 1957 Cri LJ 889 : AIR 1957 SC 589

other explanation as to how a sanikala stone could be mentioned in the inquest proceedings when M.O.1 sanikala stone came to light only when it was recovered after the alleged apprehension of the accused on 23.10.2007 at 3:00 PM.

On the aforestated analysis, this Court finds no clear evidence of the deceased, Pemmadi Ramayamma, having met with a homicidal death and the question of convicting the accused therefor does not arise. The Sessions Court did not take note of the glaring infirmities in Ex.P3 inquest report which demonstrated in no uncertain terms that the investigation was neither fair nor unbiased and had been engineered and manipulated from the very beginning.

The appeal is therefore allowed. The conviction and sentence passed against the appellant/accused in Sessions Case No.324 of 2008 on the file of the learned I Additional District & Sessions Judge, West Godavari at Eluru, are accordingly set aside. The appellant/accused shall be set at liberty forthwith unless his confinement is required in relation to any other case. The fine, if any, paid by the appellant/accused shall be refunded to him.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

15th SEPTEMBER, 2016

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