

**In the High Court of Judicature at Hyderabad**  
**for the State of Telangana and the State of Andhra Pradesh**

**Criminal Appeal No.1529 of 2010**

**Between:**

Smt.Darangula Yerramma @ Wadde Laxmi

... Appellant

**and**

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

... Respondents

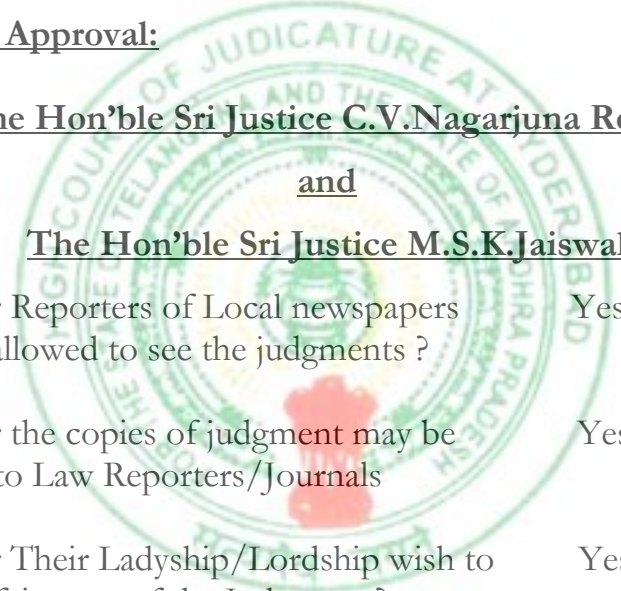
**Date of Judgment Pronounced: 09-11-2016**

**Submitted for Approval:**

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

**and**

**The Hon'ble Sri Justice M.S.K.Jaiswal**

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
  2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
  3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

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(C.V.Nagarjuna Reddy, J)

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(M.S.K.Jaiswal, J)

\* The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.S.K.Jaiswal

+ Criminal Appeal No.1529 of 2010

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rep. by the Public Prosecutor  
High Court, Hyderabad

...Respondent

! Counsel for the petitioner: Mr.TGS.Srivatsav

^ Counsel for the respondent: Public Prosecutor (TS)

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? Cases cited:



**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

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**Criminal Appeal No.1529 of 2010**

**Date: 09.11.2016**

**Between:**

Smt. Darangula Yerrama @ Wadde Laxmi, W/o Bakkanna

**.. Appellant**

**and**

The State of A.P., Rep. by the Public Prosecutor  
High Court, Hyderabad

**.. Respondent**

**Counsel for the Appellant :** Mr.TGS.Srivatsav

**Counsel for the respondent:** Public Prosecutor (TS)

**The Court made the following:**



**Judgment :** (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.17 of 2010 on the file of the Judge, Family Court –cum- Additional Sessions Judge, Adilabad, filed this Criminal Appeal questioning her conviction for the offences under Sections 302 and 379 IPC and sentence to undergo Life Imprisonment and to pay a fine of Rs.200/-, in default, to suffer Simple Imprisonment for one month for the offence under Section 302 IPC and also to undergo Rigorous Imprisonment for a period of 3 years and to pay fine of Rs.100/-, in default, to undergo Simple Imprisonment for a period of one month for the offence under Section 379 IPC with the direction that both the sentences shall run concurrently.

The case against the appellant, as unfolded by the Prosecution, is briefly stated hereunder:

On 26-10-2009 at about 5.30 p.m., the appellant came to the house of PW.1 and took his mother- Gaddam Gangu (hereinafter referred as 'the deceased') to her house on the pretext of settling a dispute between her and her daughter-in-law. At that time, PW.2- daughter of the deceased was present at the house. As the deceased did not return till night, PWs.1 and 2 started searching for her and on 27-10-2009 at about 2.00 p.m., PW.3- their cousin

informed them that he found the dead body of the deceased in the last quarter situated at Model Colony, Narasapur-G Village. On such information, PWs.1 and 2 and other villagers rushed to the spot and found the dead body of the deceased with head injuries. As the rented house of the appellant was situated besides that quarter and as the deceased was taken by the appellant, PW.1 gave a complaint against her to LW.17- Sub-Inspector of Police, Narasapur-G, who registered the same as Crime No.54 of 2009 under Section 302 IPC, issued express FIRs to all the concerned and took up the investigation.

During the course of investigation, LW.17 examined and recorded the statement of PW.1 in Part II Case Diary. Meanwhile, PW.9- Circle Inspector of Police, Nirmal, visited the spot, took up further investigation, examined and recorded the statements of PWs.1, 2, 3 and LWs.3 and 4, who are the nephew and daughter-in-law of the deceased respectively, got photographed the dead body of the deceased with the help of LW.7- Manajee Rama Krishna and recorded his statement. Due to late hours, PW.9 could not conduct the inquest and he sent a request to the Dog Squad team to visit the spot for their assistance and investigation of the case. On the next day *i.e.*, on 28-10-2009 morning, LW.8- Dog Handler visited the scene of

offence along with Dog Vicky, which, after smelling the dead body of the deceased, proceeded to the house of the appellant and after smelling some items in her house, went towards the outskirts of the village and halted. PW.9 examined and recorded the statement of LW.8- Dog handler, secured the presence of LWs.12 and 13- Panchas and conducted inquest over the dead body of the deceased. During inquest, PW.9 seized the clothes of the deceased along with the blood stained earth and control earth for forwarding the same to RFSL, Karimnagar, for examination and report. Thereafter, he sent the dead body of the deceased to the Government City Hospital, Nirmal, for conducting autopsy under the escort of PC.1959 of PS Narsapur-G and drafted a rough sketch of the scene. As per the statements of PWs.2 and 3 and LWs.4 and 5, PW.9 came to know that the gold ornaments *i.e.*, gold kuthi kattu, gold ear rings and gold kathera baleelu were found missing from the person of the deceased. Hence, PW.9, suspecting that the appellant committed murder of the deceased and snatched away her gold ornaments, filed a Memo before the Court below with the prayer to add Section 379 IPC in the original FIR. During the further course of investigation, PW.9 examined and recorded the statements of LW.9- Kalwa

Hanumabai and LW.10- Gajari Bhojanna and made efforts to apprehend the appellant.

On 28-10-2009 at about 11.30 a.m., on reliable information, PW.9 along with LW.17- Sub-Inspector of Police, Narsapur-G, rushed to Narsapur-G bus stand and apprehended the appellant. On interrogation, when the appellant was about to confess the offence, PW.9 secured the presence of LWs.14 and 15- panchas, recorded the confessional statement of the appellant. In pursuance thereof, the appellant lead PW.9 and the panchas to the house of LW.11- More Bhojaram at Limba (K) Village of Kuntala Mandal, where she had hidden the stolen gold ornaments. PW.9 recovered those gold ornaments under the cover of a recovery panchanama and also examined and recorded the statement of LW.11- More Bhojaram. From there, the appellant lead the Police and the panchas to her rented house situated at Model Colony, Narsapur- G, where she got recovered the axe, which was used for commission of offence, under the cover of a separate recovery panchanama before the Panchas. On the same day, PW.9 brought the appellant to the Narsapur-G Police Station and at 15.00 hours, effected her arrest and made entries in the connected records. The grounds of her arrest and the legal rights have been communicated to LW.11- More

Bhojaram. After completion of legal formalities, the appellant was sent to Court for remand.

During the course of further investigation, LW.18 forwarded the material objects seized during the course of investigation to RFSL, Karimnagar, for examination and report and obtained the same.

PW.8- Medical Officer, who conducted autopsy over the dead body of the deceased, had issued a detailed Post-Mortem Examination report opining that the cause of death of the deceased was “shock due to head injury”.

While the appellant denied commission of offence and preferred to be tried, the Court below has framed the following two charges:

“Charge No.1:

That you/Darangula Yerramma @ Wadde Laxmi (Accused) on 26-10-2009 at about 5.30 p.m., at Narsapur-G did commit murder by intentionally (or knowingly) causing the death of deceased (Gaddam Gangu), you beat the deceased Gaddam Gangu with the blunt weapon i.e., the back of the Axe over her head and caused her death, and thereby, committed an offence punishable under Section 302 of the Indian Penal Code, and within my cognizance.

Charge No.2:

That you/Darangula Yerramma @ Wadde Laxmi on the same day, on the said date, time and place as noted

in charge No.1 supra, committed the theft of gold Kuthikattu, gold ear rings, gold Kathera Baleelu wg. about 21.00 grms, all worth of Rs.32,000/- by taking it out of the possession of deceased (Gaddam Gangu), and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within my cognizance.”

In support of its case, the Prosecution examined PWs.1 to 9 and marked Exs.P.1 to P.12 and MOs.1 to 4. No evidence was let in on behalf of the appellant.

On appreciation of both oral and documentary evidence, the lower Court has convicted and sentenced the appellant as stated herein before.

We have heard Mr.TGS.Srivatsav, learned Counsel for the appellant, and the learned Public Prosecutor for the State of Telangana.

The case of the prosecution is mainly based on circumstantial evidence in general and the last seen theory in particular and the alleged recovery of MOs.1 to 4.

It is legally well settled that in a case based on circumstantial evidence, motive plays a vital role and absence of proof of motive considerably weakens the case of the prosecution. We would,

therefore, like to examine whether the prosecution was able to establish motive.

PW.1- son of the deceased gave Ex.P.1- Police report. He has stated in his report that PW.2- his sister has informed him that on 26-10-2009 in the evening at about 5.30 p.m., while his mother was at home, the appellant came to their house, informed that her daughter-in-law was quarrelling with her and has, accordingly, requested the deceased to come to her house and convince her daughter-in-law. That saying so, the appellant has taken the deceased to her house; that till late night, the deceased did not return home; that while they were searching for the deceased, on 27-10-2009, in the afternoon hours, PW.3 came to their house and informed them that he saw the deadbody of the deceased at the last quarter situated in Modern Colony near Deveunicheruvu road situated on the outskirts of Narsapur-G Village and that on coming to know about the same, PW.1 along with some villagers went there and found the dead body of his mother lying with head injury and oozing blood. It is further stated that the quarter in which the dead body of the deceased was found lying is situated by the side of the house in which the appellant was residing on rent. PW.1 has expressed suspicion that

due to some reasons, appellant might have killed his mother and fled away from the village.

In the charge sheet, it is alleged that the deceased always used to wear gold earrings and that the appellant, who kept an evil eye on them, decided to snatch away the same by killing the deceased. In his cross-examination, PW.9- Investigation Officer candidly admitted that in Ex.P.1, there is no mention of missing of the earrings and that till the statement of PW.2 was recorded, no one made a complaint about the same. Failure of PW.1 to refer to the motive and mentioning of missing of gold earrings in Ex.P.1- report coupled with the fact that till PWs.2's statement was recorded, no one referred to the missing of gold earrings clearly shows that the prosecution has set up the plea of motive as a pure after thought.

In the absence of motive, the Prosecution must establish all the links in the chain of circumstances to justify the conviction of the accused. The evidence on record would show that the prosecution mainly relied upon the last seen theory, recovery of earrings and the crime weapon.

As regards the last seen theory, PWs.2, 4 and 5 were examined to establish the same. No doubt, PW.1 has deposed

that on 26-10-2009, the appellant had taken his mother on the pretext of settlement of dispute between her and her daughter-in-law. If this is a true version, it would have been natural for PWs.1 and 2 to first approach the appellant to ascertain the whereabouts of their mother. Neither of these two witnesses made a whisper about their enquiries with the appellant. This unnatural conduct on the part of PWs.1 and 2 throws any amount of doubt on the testimony of PW.2 regarding the appellant approaching the deceased in her presence and taking the latter along with her.

PW.4- owner of a hotel at Narsapur- G Village, in his evidence, deposed that about 10 months back, he saw the appellant going along with the deceased towards “plots” and that they did not stop at the hotel. In his cross-examination, he has also deposed that though he is running the hotel at Narsapur-G, he is a resident of Naseerabad; that the distance between Naseerabad and Narsapur-G is 1½ kms; that both the appellant and the deceased are not from his village; that he did not obtain any license from the Gram Panchayat for running hotel; and that both the appellant and the deceased were not related to him. PW.4 has denied the suggestions that he does not know anything about the case; that he is deposing falsely at the instance of Police;

and that the appellant and the deceased did not go together in his presence.

PW.5- a resident of Narsapur- G deposed that about 10 months back at about 5.00 p.m., he saw the appellant and the deceased going to the river and that on the next day, he came to know about the death of the deceased at 2.00 p.m. In his cross-examination, he has admitted that his house is situated at Harijanawada while the house of the appellant is situated at Lambadi Thanda and that in order to go to Model Colony from the house of the appellant, they need not pass through his house.

PW.9- Investigation Officer, while denying the suggestion that PWs.4 and 5 are planted witnesses, candidly admitted that to go to the house of the deceased from the house of the appellant, there is no necessity to pass through the hotel or house of PWs.4 and 5 respectively. He has further sought to probablise the last seen theory by stating that PWs.4 and 5 went to the bus stand and returned back. But, he has admitted that he has not mentioned this fact anywhere in the charge sheet.

A careful scrutiny of the evidence of PWs.4, 5 and 9 reveals that it does not inspire any confidence. PW.4 admitted that Narsapur-G is a big village and that the appellant and the

deceased were not related to him. Though he has made a statement that they used to come to his hotel for taking tea, this remained a mere *ipsi dixit*. Even assuming that PW.4 had familiarity with the appellant and the deceased, from the evidence of PW.1, it is clear that there is no need for the appellant and the deceased to pass through his hotel. Therefore, there was no probability of PW.4 seeing the appellant and the deceased together at 5.30 p.m., on 26-10-2009. Similarly, on the own admission of PW.5, there is no need for the appellant and the deceased to pass through his house. Though PW.9 sought to cover up this lacunae by stating that PWs.4 and 5 saw the appellant and the deceased together while returning from bus stand, neither of these witnesses have spoken to this fact.

Having regard to the above discussion, we have no hesitation to hold that PWs.4 and 5 are planted witnesses and that the prosecution failed to prove the last seen theory set up by them. Moreover, there is a long gap of nearly 20 hours between the time when PWs.4 and 5 were alleged to have seen the appellant and the deceased together and the time when the body was recovered. Ordinarily, such a long gap belies the last seen theory as the possibility of a third person intruding during this time gap and causing the death of the deceased cannot be ruled

out. It is also not out of place to refer in this context that as per the charge sheet and also the evidence of PW.9, both the appellant and deceased have been leading immoral life and the possibility of any third person doing away with the life of the deceased is not ruled out.

As regards the recovery set up by it, the Prosecution has relied upon Ex.P.5- confessional statement of the appellant, Ex.P.6- seizure panchanama relating to gold ornaments and Ex.P.7- seizure panchanama pertaining to axe. PW.7- registered medical practitioner is one of the two alleged attestors to these three documents. In his cross-examination, he failed to identify the name of the scribe of Ex.P.5. He has further stated that a constable accompanied by the Inspector has scribed Ex.P.5. He has denied the suggestion that Exs.P.5 to P.7 were prepared in the Police Station and his signatures were obtained there only. As per Ex.P.6, MOs.1 to 3 necklace, pair of gold ear tops and ear rings respectively were recovered from the house of LW.11- More Bhojaram, who was her alleged paramour. Interestingly, PW.9 failed to either arraign LW.11 as a co-accused or atleast examine him as a witness. In our opinion, non-examination of LW.11, from whose house the gold ornaments were allegedly recovered, is fatal to the case of the prosecution. There is no whisper in

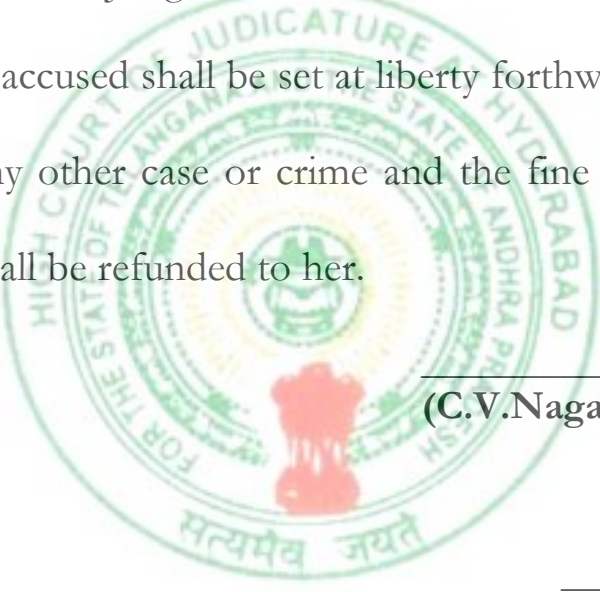
Ex.P.6 about the presence or absence of LW.11. If LW.11 was not present at his house, there is no reason for the Police to secure his presence before preparing Ex.P.6- Panchanama. Non-involvement of LW.11 in the entire episode leading to seizure of gold ornaments creates any amount of doubt on the recovery theory set up by the Prosecution. Further, no evidence is brought on record by the Prosecution to show that the appellant had free access to the house of LW.11.

As regards the alleged seizure of axe, the same was stated to have been seized from the residence of the appellant. Keeping the axe at her house while hiding the gold ornaments at the house of LW.11 by the appellant defies natural human conduct. If the appellant had chosen to hide the gold ornaments at the house of LW.11, there is no reason why she has not hidden the axe also along with the gold ornaments.

For the afore-mentioned reasons, we are unable to accept the case of the Prosecution. We are of the opinion that the Prosecution failed to prove the recovery of MOs.1 to 4 by producing reliable evidence worthy of acceptance. In conclusion, we hold that the Prosecution failed to prove motive, last seen theory and also recoveries without proper and credible evidence

and the Court below has failed to appreciate this aspect while convicting the appellant.

In the light of the above discussion, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offences punishable under Sections 302 and 379 IPC in the Judgment, dated 17.09.2010, in Sessions Case No.17 of 2010, on the file of the Judge, Family Court –cum- Additional Sessions Judge, Adilabad, are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if she is not required in any other case or crime and the fine amount, if any, paid by her shall be refunded to her.



(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 9<sup>th</sup> November, 2016

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