

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&

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

Crl.A.No.917 of 2010

Date : 8-3-2016

Between :

Daravath Jeevaratnam @ Pothu @ Raju ..
Appellant

And

The State of Andhra Pradesh,
Represented by Public Prosecutor ..
Respondent

Counsel for appellant : Ms. Naseeb Afshan
Counsel for respondent : Public Prosecutor

The Court made the following:

JUDGMENT:

(per C.V. Nagarjuna Reddy, J)

This appeal is by the sole accused in S.C.No.304 of 2009 on the file of the learned IV Additional Sessions Judge, Khammam against Judgment dated 9-2-2010 convicting him for the offence under Section 302 IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for three months.

The case as pleaded by the prosecution is as follows:

On 13-2-2009 at 11.00 hours, PW-1 submitted a report in Telugu to the Station House Officer, Sathupalli Police Station, wherein he has inter alia stated that he has three daughters and one son; that his youngest daughter Bangari (the deceased) got separated from her husband over a quarrel about six months back and deserted him; that she had two female children and all of them came to his house; that the deceased was moving with one Daravath Jeeva Rathnam (the accused), and they were living together; that both of them used to drink and frequently quarrel with each other; that he came to know about three days back that his

daughter and the accused have removed the existing house with a view to construct a new house in the colony; that since then they were sleeping in the verandah of the Gram Panchayat office; that on 13-3-2009 at 9.30 A.M. he came to know that the dead body of his daughter was in the verandah of the Gram Panchayat office and when he rushed to the place, he found his daughter's dead body with injuries on the head and other places; that during night hours, the accused used to quarrel with his daughter; and that the accused beat her daughter to death and escaped. That on receiving the report, PW-13 registered FIR No.47/2009 under Section 302 IPC and issued express FIRs to all the concerned and investigated the crime; that during investigation, PW-13 visited the scene of offence, secured the presence of PW-1 to PW-6 and also PW-9, LW-16 and 17 (panch witnesses) and conducted inquest panchanama on the dead body of the deceased. During inquest, PW-13 examined PW-1 to PW-6 and recorded their statements in Part-II of Case Diary in detail and sent the dead body of the deceased to the Government Hospital, Sathupalli for post-mortem examination to know the cause of death of the deceased. PW-13 has also conducted a separate scene of offence panchanama and collected blood stained earth and control earth besides other material available at the scene of offence in the presence of PW-6, PW-12 and LW-20. He has also obtained the photographs

of the deceased. Subsequently, the Sub-Inspector of Police, Sathupalli – PW-14, took up the further investigation, visited the scene of offence and re-examined PW-1 to PW-6, but did not record their statements as they have repeated what they have stated before PW-13. PW-14 has recorded the statements of LW-8 and LW-9 – the parents of the accused, and through them the names of LW-10 to 15, who include PW-7 and PW-8, came to light as the persons who used to visit the school during night hours for study purpose and who have seen the deceased and the accused for four days prior to the offence in the verandah of the Gram Panchayat office. On 20-3-2009 at 10.30 A.M., on reliable information, the accused was apprehended at the house of his father (LW-9). The confessional statement of the accused was recorded in the presence of the panchas i.e., PW-11 and LW-22, and the accused led the police and the panchas to the place where he has thrown away the stick after commission of the offence and the said stick was seized under cover of Ex.P-18 panchanama in the presence of the panchas. The material objects seized from the scene of offence were sent to the Regional Forensic Science Laboratory, Warangal and a report was obtained. PW-10, the Doctor who issued Ex.P-17 post-mortem examination report, opined that the cause of the death of the deceased was due to Cardio Respiratory failure due to compression of vital centers of brain as a result of intracranial hemorrhage.

After completion of the investigation, PW-14 filed the charge-sheet.

To prove the guilt of the accused, the prosecution examined PW-1 to PW-14, marked Exs.P-1 to P-18 and produced MO-1 to MO-3. On behalf of the defence, no evidence was adduced. On appreciation of the oral and documentary evidence, the trial Court has disposed of the Sessions Case as indicated hereinbefore.

I have heard Ms. Naseeb Afshan, learned Counsel for the appellant and the learned Public Prosecutor for the State of Telangana.

The learned Counsel for the appellant submitted that the prosecution case was based solely on circumstantial evidence and that in the absence of eye witnesses, the lower Court has committed a serious error in basing the conviction only on circumstantial evidence which is shaky and which does not inspire confidence. She has further argued that the lower Court has erroneously applied the 'last seen' theory based on the evidence of PW-7 and PW-8 who are chance witnesses and whose statements were recorded after two or three days after the occurrence and that from this fact itself it is clear that they were roped in at a later stage by the police with a view to falsely implicate the accused. She has further submitted that as the deceased deserted her husband, he bore grudge against her and he

would have killed her.

Opposing the above submissions, the learned Public Prosecutor submitted that the evidence adduced by the prosecution is reliable and credible and that on the facts of the case, there is no reason for any one to falsely implicate the accused.

I have carefully considered the respective submissions of the learned Counsel for the parties with reference to the evidence on record.

As per the charge sheet filed by the police, the deceased left the company of her husband about six months prior to the occurrence and went away to her parents house in Sadasivunipet with her two daughters. The accused is of a bad character who had no cordial relationship with his family members and has deserted his wife and daughter aged about 3 years and was leading a wayward life. The deceased was not only addicted to all bad habits but also leading extra marital life; that both the accused and the deceased used to collect waste papers and plastic and in that process they were attracted to each other and living together since six months prior to the occurrence as man and wife in the eye of the society; and that their families were not allowing them to live with them. That every day, the deceased and the accused used to do labour work during day time and quarrel with each other after drinking alcohol in the nights and that since about four

days prior to the occurrence, the deceased and the accused were living in the verandah of the office of the Gram Panchayat, Kistapuram during night time and they were also cooking their food in that premises which is situate adjacent to the school building, both of which have parapet walls. That on the night of 12-3-2009, the accused quarreled with the deceased and beat her with stick and caused injuries which were allegedly witnessed by LW-10 to LW-15, including PW-7 and PW-8.

To testify the conduct of the deceased, her own father was examined as PW-2. He deposed that his daughter deserted her husband and came to his house two months prior to her death and that she eloped with the accused who is a resident of Kistapuram, which is 2 K.M. away from his village and has been living with him in that village. He further deposed that the deceased was a boozier (drunkard). In his cross-examination, he deposed that his son-in-law bore grudge against his daughter as she not only deserted him but also left her children. PW-2 however denied the suggestion that the accused is not responsible for the murder of his daughter.

PW-3 was the Sarpanch of Kistapuram village. She deposed that the accused and the deceased were living together for the last six months; that they were eking out their livelihood by collecting waste papers; that for three days prior to the occurrence, the accused and the deceased

were sleeping together in the Panchayat office; that PW-1, the Head Master of the School telephoned PW-3 at about 9 A.M. about the murder; that herself and PW-1 have informed the parents of the deceased on telephone; that the entire body of the deceased had injuries; that the accused and the deceased used to quarrel now and then and that both of them used to drink alcohol. In her cross-examination, PW-3 deposed that the police have examined her at 9.30 A.M. on 13-2-2009; that since the incident took place during night time, she could not say whether anybody witnessed the occurrence; and that a wall is intervening the school and the Gram Panchayat office. She denied the suggestion that since the accused belonged to the opposite group, she was deposing falsely.

PW-4, a resident of Kistapuram and an agriculturist, deposed that on 13-2-2009 at about 9 P.M. he went to his agricultural land abutting the Gram Panchayat office for irrigating the lands as electricity was made available and he witnessed the accused and the deceased going inside the Panchayat office; that on the next day morning he came to know that a woman was murdered at the Gram Panchayat office and that thereupon he went to that place and saw the dead body which revealed injuries on it. He has also deposed that the deceased and the accused were residing in the village for the last six months and that as he has last

seen the deceased in the company of the accused, he was given to understand that the latter killed the former. In his cross-examination, PW-4 deposed that he has stated to the police at 9 A.M. about the fact of his witnessing the deceased and the accused while he was going to his agricultural land.

PW-7 and PW-8 who are Degree students are the witnesses of vital importance, for, both of them have deposed that they used to have combined study along with some other students, including PW-8 in the school premises during nights; that they used to see the deceased and the accused sleeping in the verandah of the Gram Panchayat office for four or five days prior to the death of the deceased; that the accused and the deceased used to quarrel every day between 11 and 12 during night time and that the deceased and the accused quarreled before the former's death. In his cross-examination, PW-7 deposed that they used to go to the school at 7 P.M. and leave the school at 6.30 A.M. the following morning; that with the permission of the Head Master, they used to take southern side room for common study and sleep on the floor; that one cannot notice what was happening in the Gram Panchayat office if he sleeps on the floor; that the incident happened at night between 9 and 10 P.M. and that he did not witness what happened in the Gram Panchayat office as there was compound wall between the said office and the school. He

further deposed that the police examined him on 14-2-2009 at 7.30 P.M. when he was at his house at Kistapuram; that he did not witness the dead body and was not present when PW-2 presented the report and that he never acted as an inquestdar. The only suggestion put to PW-7 was that the first husband of the deceased murdered her and that the police have foisted a false case against the accused, which of course, was denied by the witness.

From the evidence on record as discussed above, it is not in dispute that the deceased deserted her husband, eloped with the accused and was living in Kistapuram, the native village of the accused, at the time of her death. Nothing was suggested to any of the witnesses who spoke about the deceased living with the accused to falsify their testimony in that regard. There is no dispute about the fact of the deceased living with the accused, at least for a few months immediately before her death. In the absence of any suggestion to PW-3, 4, 7 and 8 that the deceased and the accused were not sleeping in the verandah of the Gram Panchayat office for 3 to 4 days prior to the occurrence, we are of the opinion that the case of the prosecution that the accused was in the company of the deceased in the Gram Panchayat office shall be taken as proved. No doubt, PW-4, in his statement recorded under Section 161 Cr.P.C. by the Police, did not state that on the night of the occurrence at about 9 P.M. he saw the accused and the deceased going

into the Gram Panchayat office while he was proceeding to his agricultural fields for irrigating the lands and to this extent there is an embellishment in his evidence before the Court. Even if his evidence on this aspect is ignored, in the absence of any dispute about the case of the prosecution that the accused and the deceased were living together and that they were also sleeping in the verandah of the Gram Panchayat office for 3 or 4 days prior to the occurrence, we are of the opinion that the prosecution has succeeded in discharging its burden, through the evidence of PW-7 and PW-8 who were students. PW-7 and PW-8 have categorically deposed that they were observing the accused and the deceased sleeping in the verandah of the Gram Panchayat office for 4 or 5 days prior to the occurrence and also on the day of the occurrence and that they have also noticed both the accused and the deceased quarrelling with each other every night including the night on which the death of the deceased has taken place. Significantly, no suggestion was put to these witnesses to doubt their presence in the school during all the 4 or 5 nights prior to the occurrence and also on the night on which the occurrence has taken place. Similarly, no suggestion was put to them that they have not seen the accused and the deceased together in the verandah of the Gram Panchayat office. The defense has only made the suggestions that these

witnesses have not seen the dead body, that they have not given the police report; and nor that they were not present during inquest panchanama. It is a fact as deposed by PW-7 and PW-8 that they have neither given the police report nor they were present during inquest. In this regard, the evidence of PW-14 assumes relevance. In his chief-examination, PW-14 stated that during his investigation in Kistapuram village, the names of PW-7 and PW-8 came to his notice as having witnessed the accused and the deceased living together and that he has examined the said witnesses on 14-3-2009 at about 10.30 or 11 A.M. It thus appears that PW-7 and PW-8 being students have not evinced much interest immediately after the death of the deceased to give police report on 13-3-2009 and it is only after PW-14 has taken up the further investigation, by which time PW-13 has completed the inquest, that PW-7 and PW-8 were identified by PW-14 as the persons who have last seen the accused in the company of the deceased and accordingly they were examined by the prosecution. Therefore, not seeing the dead body of the deceased on 13-2-2009 and non-participation in the inquest panchanama by PW-7 and PW-8 cannot be viewed as a suspicious circumstance doubting the veracity of their evidence. The defense failed to suggest any reason for PW-7 and PW-8 to depose against the accused. Therefore, in our opinion, PW-7 and PW-8 are the independent witnesses who had

absolutely no axe to grind against the accused. The prosecution has accordingly proved the 'last seen' theory through these witnesses, whose evidence remained unshaken.

Though there is no direct evidence of the accused causing the death of the deceased, applying the 'last seen' theory, the accused failed to explain the incriminating circumstances under which the deceased was done to death being the person who was 'last seen' in the company of the deceased. Further, based on his confession, MO-1 – bamboo stick which has six edges with six nails on it, and of the size of about 5 ft. 5 inches long was seized under Ex.P-18 panchanma, in the presence of two panchas, including PW-11. Ex.P-17 – post-mortem report reveals that there were as many as 8 injuries over the dead body of the deceased and PW-10 who conducted the autopsy deposed that the injuries were caused with a blunt object. The defense sought to suggest that if a drunken person falls on a rough surface, the injuries found on the body of the deceased are possible to be inflicted, which suggestion was of course, denied by PW-10. Thus, the prosecution was able to connect MO-1 which was recovered on the confession of the accused, with the injuries found on the body of the deceased, which is also a vital link in the chain of circumstances pointing to the guilt of the accused.

In the light of the above discussion, we are of the

opinion that the prosecution has proved the guilt of the appellant/accused beyond reasonable doubt and that the lower Court has rightly convicted the appellant and sentenced him as it did in the Judgment under appeal and hence we have no reason to interfere with the same. For the above mentioned reasons, the criminal appeal fails and the same is accordingly dismissed.

Justice C.V. Nagarjuna Reddy

Justice M.S.K.

Jaiswal

Date : 08-03-2016

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