

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

CRIMINAL APPEAL No.1550 of 2010

Between:

Arepalli Chalapathi Rao,
S/o Venkata Narayana

... Petitioner

And

The State of A.P., repled by the
Public Prosecutor

... Respondents

JUDGMENT PRONOUNCED ON 30.11.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

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

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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> Head Note:

! Counsel for the Petitioner: Mr. T.Niranjan Reddy

Senior counsel

For Mr. P.S.P.Suresh Kumar

^ Counsel for the Respondent: Public Prosecutor (AP)

? Cases Referred:

1. 2016(1) ALD (CrI.)(7)(SC)
2. (2012) 6 SCC 403
3. AIR 1984 SC 63
4. Crimes (HC) 1 (1988) 654
5. AIR 1973 SCC 55
6. (2005) 7 SCC 178
7. (2014) 12 SCC 439

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
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CRIMINAL APPEAL No.1550 of 2010

Date:30.11.2016

Between:

Arepalli Chalapathi Rao,
S/o Venkata Narayana

..... Appellant

And:

The State of A.P., repled by the
Public Prosecutor

...Respondent

Counsel for the appellant: Mr. T.Niranjana Reddy
Senior counsel
For Mr. P.S.P.Suresh Kumar

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

The sole accused in Sessions Case No.217 of 2008 on the file of the learned Sessions Judge, Mahila Court, Vijayawada, filed this Criminal Appeal against the judgment, dated 19.10.2010, passed in the said Sessions Case, whereby he was convicted for the offence under Section-302 IPC and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for six months.

The case of the prosecution in brief is as follows.

The marriage of the appellant and the deceased was performed in the year 1985 and they were blessed with a male child; that the father of the appellant married another woman, after the death of the mother of the appellant, and the step mother was harassing the deceased; that, therefore, the father of the deceased brought her and the appellant to a rented house at Patamata and provided financial assistance for establishing coconut shop; that later, it is alleged that father of the deceased sold away the house and established a chicken shop, where the appellant started doing the real estate business; and that the appellant was addicted to drinking and was maintaining illegal intimacy with one Bujji (P.W-8).

It is the further the case of the prosecution that on 13.7.2007, at about 10.30 pm., the appellant called P.W-1-the elder brother of the deceased through cell phone and when P.W-1 went to the house of the deceased, the appellant stated that he intended to divorce the deceased as she was questioning the appellant's attitude towards P.W-8. P.W-1 informed the same to his parents and they decided to mediate.

It is further the case of the prosecution that the appellant and the deceased were frequently picking up quarrels; that the appellant was coming home in a drunken condition and beating the deceased; that on 14.7.2007, at about 9.30 pm., P.W-3-the son of the appellant and the deceased left the house and went to his grand mother's house; that P.W-3 saw the appellant and the deceased quarrelling with each other; and that the appellant after committing the murder of the deceased went to P.W-6 in the early hours on Sunday and made extra-judicial confession before him stating that he throttled the neck of the deceased and killed her. That P.W-6 and his mother went to P.W-4-the younger brother of the deceased, at about 9 am on the next day morning and informed about the statement made by the appellant to P.W-6; and that, P.Ws.4 and 5 went to the house of the appellant along with P.Ws.2 and 3 and found the deceased lying on the floor.

It is the further case of the prosecution that at about 12.30 pm, on 15.7.2007, P.W-1 went to the Police Station and submitted a written report under Ex.P-1 to P.W-11, who registered the same as a case in Crime No.279 of 2007 against the appellant for the offence under Section-302 IPC, sent the copy of the FIR to the Metropolitan Magistrate Court, Vijayawada and copies of the FIR to all the officers concerned.

That P.W-13 took up the investigation, during which, he examined P.Ws.1 to 6 and L.Ws-2 and 8, recorded their statements, went to the scene of offence on 15.7.2007 at about 1 pm, prepared observation report in Ex.P-8 in the presence of P.Ws-7 and 8 and L.W-15; secured the panchayatdars and conducted inquest over the dead body of the deceased in the presence of P.W-7 and L.Ws.15 and 6, seized MOs.1 to 3, prepared a rough sketch of the scene of offence under Ex.P-9 and sent the dead body of the deceased to the Government General Hospital, Vijayawada for conducting post-mortem examination. P.W-13 got the scene of offence photographed by P.W-10, examined and recorded the statements of L.Ws.9 and 10 and subsequently, on 18.7.2007, he examined P.W-8 and recorded her statement.

That P.W-12 conducted autopsy over the dead body of the deceased on 16.7.2007 and issued Ex.P-6-post-mortem report.

He opined that the cause of death of the deceased was due to Asphyxia, as a result of pressure over front of neck, caused by strangulation. Subsequently, P.W-12 examined the appellant on 21.7.2007 and found that no tissue is present in his finger nails and no injuries were present on any part of the body of the appellant and accordingly, issued Ex.P-7-Certificate.

That on 21.7.2007, P.W-13 along with his staff, on information, went to Kanigiri Nagar Centre Check-post on Bandar road, arrested the appellant and remanded him to judicial custody and later, filed the charge sheet against him under Section-302 I.P.C.

As the plea of the appellant was one of denial, the prosecution examined P.Ws.1 to 13, marked Exs.P-1 to P-9 and produced M.Os-1 to 3. No oral evidence was let in on behalf of the appellant. However, Exs.D-1 and D-2 were marked on his side.

On appreciation of the oral and documentary evidence, the lower Court has convicted the appellant and sentenced him as indicated above.

At the hearing, Mr. T.Niranjan Reddy, learned senior counsel representing Mr. P.S.P.Suresh Kumar, learned counsel for the appellant, submitted that the lower Court has committed a serious error in relying upon the extra-judicial confession of

the appellant before P.W-6 as, the latter's evidence is full of contradictions and his conduct was wholly unnatural. He has further submitted that P.W-6, who was, admittedly, working under P.W-4-one of the brothers of the deceased, was a planted witness and that, he being a worker under P.W-4 at the time of the incident, the appellant was not holding a position of authority over him and that therefore, the theory of the prosecution that the appellant has made extra-judicial confession before P.W-6 is not believable. In support of his submission, he has placed reliance on the judgment of the Supreme Court in *Vijay Shankar Vs. State of Haryana*¹.

The learned senior counsel further submitted that even if the last seen theory, based on the evidence of P.W-3-the son of the deceased, is accepted, there was a long time gap between the time when P.W-3 allegedly saw his parents together i.e., at 9.30 pm on the previous day of the incident and when the dead body of the deceased was found on the following day morning and that therefore, it is not safe to convict the appellant based on the last seen theory. He has alternatively submitted that while the charge against the appellant is that he has caused the death of his wife by throttling, the medical evidence led by the prosecution through P.W-12-the doctor, who conducted

¹ 2016 (1) ALD (Crl.) 7 (SC)

autopsy on the dead body of the deceased, opined that the death of the deceased might have occurred either due to strangulation or due to other injuries as found on the body of the deceased and that, in view of this ambiguity on the cause of the death of the deceased, the appellant is entitled to the benefit of doubt.

Opposing the above submissions of the learned senior counsel, learned Public Prosecutor for the State of Andhra Pradesh submitted that the prosecution was able to drive home the strong motive of the appellant to cause the death of his wife as, it is clearly proved that the appellant was having extra marital relationship with one Syed Khari Bujji, who was examined as P.W-8; that two days before the incident, the appellant has expressed his intention before P.W-1-one of the brothers of the deceased that he would like to get divorced from the deceased; and that, this conduct of the appellant coupled with the evidence of P.W-3 and the medical evidence would clearly prove that there was a clear intention on the part of the appellant to cause the death of his wife. He has further submitted that even the subsequent conduct of the appellant, viz., his leaving the deceased injured at home not to return till he was arrested by the Police, also proves his intention to do away with the life of his wife.

We have carefully considered the submissions of the learned counsel for the parties.

Let us first deal with the aspect of extra-judicial confession of the appellant before P.W-6. P.W-6 deposed that he was working in the Chicken shop of P.W-4 at the time of the incident; that P.W-8 was running a Bajji (snack) shop in front of the appellant's shop; that the appellant and P.W-8 developed illicit intimacy; and that the deceased on coming to know about the same, picked up quarrel with P.W-8 near her shop, due to which, the latter has vacated and gone away from that place. He has further deposed that during the early hours on Sunday morning, the appellant came to the shop, where he was sleeping, informed that he picked up quarrel with the deceased, killed her by throttling and instructed him to inform the same to the relatives of the deceased, asked him to lock the shop and flee away from that place; that immediately, he went to his house and informed his mother; that on hearing the same, his mother went for work and he has slept in the shop; and that his mother came to the house at about 9 or 9.15 am and then, himself and his mother went to the shop of P.W-4-one of the brothers of the deceased and informed him of the same. When suggestions were put to him to the effect that he did not inform the Police about the extra marital relationship between the appellant and P.W-8,

the deceased quarrelling with P.W-8 near the shop, etc., he has denied the same.

The defence was able to extract several omissions in the statement of P.W-6, during the cross-examination of P.W-13- Investigation Officer. P.W-13 has admitted that P.W-6 did not state before him that the appellant has a coconut shop; that the appellant was having illicit intimacy with P.W-8; that whenever P.W-8 was coming to the shop of the appellant, the latter was sending P.W-6 out; and that the deceased picked up quarrel with P.W-8 and made her remove the Bajji cart from that place. P.W-13 also admitted that P.W-6 has not stated to him that he has informed about the incident to this mother and that, on her hearing the same, she went away to work and returned at 9 am for breakfast. He further admitted that P.W-6 has also not stated before him that he went to the shop of P.W-4 at about 9 or 9.15 am and that after informing the incident to P.W-4, his mother went to her work and he went to his house and slept.

On a careful scrutiny of the evidence of P.W-6, we find that his conduct is highly unnatural. If the appellant had really informed P.W-6 about the incident in the early hours of Sunday, no person of ordinary prudence would go back to sleep without informing anyone about the incident. Similarly, if the mother of P.W-6 was informed about the incident immediately after the

latter coming to know the same, through the alleged confession of the appellant, she would not have gone to her routine work without trying to inform the same to the parents or the brothers of the deceased till 9 or 9.30 am on the next day. P.W-6 admitted in his evidence that he was working under P.W-4-one of the brothers of the deceased, at the relevant time of the incident. This fact coupled with the unnatural conduct of P.W-6 leads to the inevitable conclusion that he is a planted witness.

In *Sahadevan and Anr. Vs. State of Tamilnadu*², the Supreme Court has laid down the propositions in respect of the evidentiary value of the extra judicial confession and its reliability as under:

- “1. The extra-judicial confession is a weak evidence by itself. It has to be examined by the Court with greater care and caution;
2. It should be made voluntarily and should be truthful;
3. It should inspire confidence;
4. An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
5. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and
6. Such statement essentially has to be proved like any other fact and in accordance with law.”

² (2012) 6 SCC 403

In *Vijay Shankar* (1 supra), the Supreme Court, while referring to the judgment in *Sahadevan* (2 supra), held that the extra-judicial confession being a weak piece of evidence, the Courts ought to view it with greater care and caution and that, for an extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

As rightly submitted by the learned senior counsel for the appellant, P.W-6 being a worker under P.W-4, he was in no position to help the appellant in any manner and it defies any logic or reason for the appellant to confess his committing murder before his servant. Besides the unnatural conduct of P.W-6, various improvements were made by him in his evidence from the statement given by him under Section-161 Cr.P.C. before the Police, as elicited from the evidence of P.W-13.

At any rate, the conduct of this witness, as discussed above, does not persuade us to believe him as a truthful witness and since he was working under P.W-4, at the time of the incident, he was, evidently, planted by the prosecution. The lower Court, in our opinion, has committed a serious error in placing reliance on the evidence of P.W-6.

As regards the submission of the learned senior counsel that the prosecution failed to establish the guilt of the appellant

beyond reasonable doubt, we have carefully gone through the evidence on record.

It is well settled legal position that in a case based on circumstantial evidence, the prosecution must bring out the incriminating features, which are incompatible with the innocence of the accused, and every link in the chain of circumstances must be completely proved in order to hold the accused guilty of commission of offence. It is equally well settled that in a case based on circumstantial evidence, motive plays a vital part. (See *Shivji Genu Mohite Vs. State of Maharashtra*³, *Tomaso Bruno & Anr. Vs. State of Uttar Pradesh*⁴ and *Vivek Kalra Vs. State of Rajasthan*⁵).

The motive attributed to the appellant for causing the death of his wife was his extra marital relationship with P.W-8. The prosecution has examined P.Ws.1 to 4 and 6 to prove this fact. P.W-1, one of the brothers of the deceased, deposed in his evidence that the appellant developed illicit intimacy with P.W-8; that he was paying money to his sister for her necessities; that the appellant was addicted to drinking; that the deceased on coming to know about the extra marital relationship of her husband with P.W-8, went to her husband's

³ AIR 1973 SC 55

⁴ (2015) 7 SCC 178

⁵ (2014) 12 SCC 439

shop one day and scolded P.W-8; that thereafter, the appellant in a drunken condition beat the deceased for creating a scene in front of his shop; that on the day of the said galata, the deceased informed him about the same; and that he went to the house of the appellant and asked him to look after the deceased well. He has further deposed that one week or ten days later, the appellant called him and when he went there, the appellant was in a drunken condition and informed him that he needs divorce from the deceased as, she created nuisance in front of his shop; and that later, he came to know about the death of his sister through P.W-6-a worker in P.W-4's shop. In his cross-examination, P.W-1 has reiterated that he has stated to the Police that his sister picked up quarrel with P.W-8 three months prior to the incident. He has, however, added that he cannot exactly say whether it was three months or 10 days. In Ex.P-1-complaint, he has stated that his sister has picked up quarrel with P.W-8 about three months prior to the incident. He has also further stated that one month prior to the quarrel between the deceased and P.W-8, they came to know about the illegal intimacy of the appellant with P.W-8 through his brother (P.W-4) and also his sister and that they did not admonish the appellant immediately. He has denied the suggestion that there was no illegal intimacy between the appellant and P.W-8 and

that it was created only for the purpose of the case. He has also denied the suggestion that the deceased never picked up quarrel with P.W-8 and that the appellant never beat her.

P.W-2, the mother of the deceased, deposed that the appellant has got a Bajji shop established through a lady in front of his shop and developed illegal intimacy with that lady. She has also referred to the quarrel picked up by the deceased with the said lady.

P.W-3-the son of the deceased and the appellant also spoke about the illicit intimacy between his father and P.W-8, who was running Bajji shop in front of his father's shop, and his mother picking up quarrel with P.W-8 and getting the Bajji cart removed from that place.

P.W-8 in her evidence admitted that she knows the appellant; that she ran a Bajji shop in front of the appellant's Chicken shop for a period of 10 months; and that she removed the same about three years back. She has further deposed that she has filed a criminal case under Section-498-A IPC against her husband, consumed sleeping tablets and was admitted in a hospital. She has, however, deposed that when the Police examined her, she stated that there was no illegal intimacy between herself and the appellant. P.W-8 was treated hostile. Though she has denied her illegal intimacy with the appellant,

she has corroborated the testimony of P.Ws.1 to 4 to the extent that she was running a Bajji shop in front of the appellant's shop and that she has acquaintance with him.

The consistent evidence of P.Ws.1 to 4 clearly establishes the illicit relationship between the appellant and P.W-8, the deceased objecting to this relationship and even picking up a quarrel with P.W-8, which, obviously, irked the appellant making him beat the deceased and also express his desire before P.W-1 that he needs divorce from his wife.

We are therefore, of the opinion that the prosecution has established the motive of the appellant to do away with the life of the deceased.

As regards the last seen theory, P.W-3, who is no other than the son of the appellant and the deceased, categorically deposed in his evidence that his parents were frequently picking up quarrels with each other; that the appellant was coming to the house in drunken condition, abusing and beating the deceased and also the witness. He has further deposed that on 14.7.2007, he took tiffin box for his grand mother, went to her house; that at the time of his leaving the house, his parents were quarrelling with each other; and that he slept at the house of his grand mother. In the cross-examination, he deposed that he has left for his grand mother's house after 8 pm on 14.7.2007 and

has not returned to his house on the next day morning for attending to his daily ablutions. He has denied the suggestion that he has not gone to his grand mother's house on the previous night and that he went along with his friends to some other place on the previous night of the incident without any intimation. This evidence of P.W-3 would clearly reveals that he has seen his parents being together in the house and quarrelling with each other when he left the house after 8 pm on the date of the incident. No suggestion was put to any of the prosecution witnesses on behalf of the defence that the appellant was not at home during that night. However, a feeble attempt of *alibi* was made by the appellant during his Section-313 Cr.P.C. examination, wherein he has stated that at 10.30 pm on 14.7.2007, he went to his friend's place at Kanigiri and was arrested by the Police at Kanigiri on the evening of 16.7.2007. Having taken such plea, the appellant has failed to produce any evidence in support of his plea of *alibi*.

Alibi is a double edged weapon, in that, if the accused is successful in proving the same, he will be entitled for acquittal and in a converse case, this plea would operate as a link in the chain of circumstances for conviction. The false plea of *alibi* of the appellant strengthens the case of the prosecution that he was with the deceased at the time of the incident and the cause of

her death was especially in his knowledge, thereby, placing the burden on him to explain the same, as envisaged under Section-106 of the Indian Evidence Act, 1872.

Dealing with *alibi*, the Supreme Court in *State of Maharashtra Vs. Narisingarao Gangaram Pimple*⁶ held that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally, the Court would be slow to believe any counter-evidence to the effect that that he was elsewhere when the occurrence happened. But, if the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of reasonable doubt and that for that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy and that it follows, therefore, that strict proof is required for establishing the plea of *alibi*.

In *Debar Kundu Rama Krishna Rao Vs. State of West Bengal*⁷, the Kolkata High Court held that a false plea of *alibi* is also an incriminating circumstance giving an inference of guilt even in a case based purely on circumstantial evidence.

⁶ AIR 1984 SC 63

⁷ Crimes (HC) 1 (1988) 654

In the light of the evidence and the legal position, as discussed above, we have no hesitation to hold that the appellant was present at the time of the death of his wife and that he failed to explain the circumstances leading to the death of his wife which were especially in his knowledge.

The learned senior counsel submitted that the medical evidence produced by the prosecution does not prove the charge that the deceased was killed by way of throttling. No doubt, the charge against the appellant is that he has throttled his wife to death, but, P.W-12-the doctor, who conducted autopsy over the dead body of the deceased, opined that the cause of her death is due to asphyxia, as a result of pressure over front neck, caused by strangulation and he has issued Ex.P-6-Post-mortem report which contains the following injuries:

- “1. Abrasion 8 cm x 1 cm present horizontally at the level of thyroid cartilage on the front of neck.
- 2, Abrasion present on front of neck 2 cm x 0.5 cm (present 2 cm above the injury No.1).
- 3 Contusion present on right parietal area 5 cm x 4 cm.
4. Contusion present on left parietal area 2 cm x 2 cm.
5. Contusion present on the parietal area near mid line 2 cm x 2 cm.
6. Abrasion present on outer side of left eye 3 cm x 1 cm in size.”

The learned counsel further submitted that since the injuries found on the body of the deceased are not of such nature which could have been caused with an intention to cause her death, the appellant may be convicted for the offence under Section-304-Part-II I.P.C. We are afraid, we cannot accept this submission.

As per Medical Jurisprudence and Toxicology by Modi, violent deaths resulting chiefly from asphyxia, includes death due to hanging, strangulation, suffocation and drowning. Strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. Strangulation may also be brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances. Hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any means other than by strangulation, although the larynx and the trachea may, in rare cases, be fractured by a fall. Usually in the cases of strangulation, the following features are noticed:-

- “1) Face – Congested, livid and marked with petechiae.
- 2) Bleeding from the nose, mouth and ears may be found.
- 3) Ligature mark – Horizontal or transverse continuous, round the neck, low down in the neck

below the thyroid, the base of the groove or furrow being soft and reddish

4) Subcutaneous tissues under the mark – Ecchymosed

5) Injury to the muscles of the neck – Common

6) Fracture of the larynx and trachea – Often found also hyoid bone

7) Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body – Usually present.”

In the instant case, the evidence of P.W-12-doctor who conducted autopsy and Ex.P.6-Post-mortem report need to be considered. The Medical Officer, after having noticed the injuries referred to above, opined that the cause of death is asphyxia as a result of pressure over front of neck caused by strangulation. He admitted that if throttling is caused by pressure of fingers on the neck of a person, finger pressure abrasion marks on the neck can be noticed, either on both sides or one side of the neck. The Doctor further stated that he noticed such abrasions and mentioned the same in Column No.11 of injury No.2 of the post-mortem report. The Medical Officer admitted that he did not find the signs such as clenching of fist and protruding of tongue, which may be noticed in some cases of strangulation deaths. The Medical Officer also admitted the suggestion that since there were four head injuries even that could be the cause of death.

In Ex.P.6-postmortem report, the following observations were noted:-

“External appearance:- Face congested. Bluish discolouration of finger nails. Body kept in cold storage

Neck, larynx, thyroid and other neck structures:- As per injury column, Thyroid cartilage contusion present. Hyoid bone intact.”

After taking into consideration the above and also the report of the Forensic Science Laboratory, the Medical Officer concluded that the death was due to asphyxia as a result of pressure over front of neck caused by strangulation.

The case of the prosecution is that the accused throttled his wife to death and attempted to screen the evidence by creating a scene showing as if the deceased committed suicide and for that purpose he tied a knot of cable TV wire to a ceiling wire pipe and when pulled tightly, the wire got snapped and therefore he could not create the scene as if the deceased committed suicide by hanging. Thereafter, the accused left the dead body on the floor and left the house by locking the door from outside, which was broken open the next day morning. The version of the prosecution, as spoken to by the prosecution witnesses, is amply corroborated by the medical evidence on record and therefore no hypothesis other than that of the involvement of the accused in causing the death of the deceased

by strangulation with hands by applying pressure on the neck with hands is possible.

For the afore-mentioned reasons, we do not find any reason to interfere with the conviction and sentence ordered against the appellant by the lower Court in the judgment under appeal. Hence, the Criminal Appeal is dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

30th November 2016

Note.

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B/o

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