

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

Criminal Appeal No.894 of 2010

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Dated: 28th March, 2016

Between:

Peruka Laxamaiah

...Appellant/Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

...Respondent

Counsel for the appellant: Sri K.Sita Ram

Counsel for the respondent: Public Prosecutor

The Court made the following:

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

The appellant, who is accused of killing his own son on suspicion that he is not the latter's biological father and faced prosecution, was convicted for the offence under Section 302 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer imprisonment for life and also to pay fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for a period of six months.

The case of the prosecution, in brief, is that on 08.02.2009 at 11.30 pm, the appellant came to Sangareddy Rural Police Station, voluntarily surrendered before PW.11 and allegedly confessed the commission of offence. Thereupon, PW.11 summoned PW.10 and LW.10 and in their presence, he recorded the confessional statement, out of which, the admissible portion was marked as Ex.P.4. In the said statement, the appellant has confessed that he is a resident of Kothlapur Village; that nine years back, he married PW.1 under the pressure of elders without reciprocal consent; that after marriage, they were blessed with two male children, including Sai Kumar (hereinafter referred as 'the deceased'); that the couple always used to quarrel with each other as PW.1 was not co-operating with the accused; that PW.1 developed illicit intimacy with her brother-in-law, PW.4; that the deceased was born out of such illicit intimacy; that PW.4 used to threaten him occasionally that if anything happens either to PW.1 or the deceased, he will do away with the appellant; that from this conduct, the appellant has strongly believed the existence of an illegal affair between PW.1 and PW.4; that all the relatives of PW.1 viz., her father, mother and younger brother-in-law used to support PW.1; that

the appellant suspected that all of them together may kill him at any point of time; that he has, accordingly, developed some sort of vengeance against them; that as he was not able to cause any physical harm either to PW.4, PW.1 or PW.1's relatives, he wanted to take revenge against them by killing the deceased, whom he suspected was not born to him; that on 08-02-2009, all the villagers were engaged in the celebration of Mallanna Jatara and the village was full of relatives of the villagers coming from outside; that taking advantage of the situation, when all of them were taking supper at night, he took the deceased along with him on the plea of giving a chocolate; that he went to the kirana shop located in front of the Gram Panchayat Office, purchased two chocolates and gave the same to the deceased; that afterwards, he told the deceased that he is taking him to his agricultural fields but he took him to the fields of one Buchireddy where there were thorny bushes and a water channel existing by the side of hard surface; that he has caught hold of the neck of the deceased and throttled the same, due to which, the latter started crying and that the appellant became furious, caught hold of both the legs of the deceased, beat him against hard surface due to which the latter died on the spot. Thereafter, the appellant dumped the dead body of the deceased in the water channel, came to the police station and confessed the offence. Based on the confessional statement, PW.11 registered Crime No.32 of 2009 for the offence under Section 302 IPC and issued FIR to all the concerned including the Court of the Magistrate.

During the course of investigation, on 09.02.2009 at 2.00 am, the accused lead PW.11 along with PW.10 and LW.10 to the scene of offence and disclosed the actual scene of offence, which was three kilometres away from the police station towards south in Survey No.95, in the onion fields belonging to Smt.Chittemmagari Rukkamma. PW.11 conducted panchanama, prepared Ex.P5, panchanama report, Ex.P.6, rough sketch of the scene of offence, with the aid of lights of

police jeep and recorded the statements of PWs.1 and 5 under Section 161 (3) Cr.P.C. On the same day, PW.12 took up further investigation, visited the scene of offence, summoned LW.11 and PW.8, and in their presence, conducted inquest over the dead body of the deceased, examined PWs.1 to 3, LW.4, PW.5 and PW.6, and recorded the statements of PW.2, PW.3, LW.4 and PW.6.

PW.12 sent the dead body of the deceased to the Medical Officer, Government Head Quarters Hospital, Sangareddy for conducting autopsy. The dead body was got photographed through PW.8 at the hospital. PW.9 conducted autopsy and furnished Ex.P3, post-mortem certificate, wherein he has opined that the cause of death to the best of his knowledge is "cardio respiratory arrest due to asphyxia" (due to throttling and cerebral haematoma). Later, PW.12 examined and recorded the statement of PW.4, who is a circumstantial witness on whom the accused is having suspicion that his wife has illicit intimacy with him and that as a result thereof, the deceased was born. After completion of the investigation, the appellant was brought to the police station, arrested and produced before the learned Additional Judicial Magistrate of First Class at Sangareddy at 9.05 pm on 09.02.2009. PW.13 took up further investigation on 26.02.2009 and filed the charge sheet. The plea of the accused was one of denial.

In order to prove its case, the prosecution examined PWs.1 to 13 and marked Exs.P1 to P7. On behalf of the defence, no evidence was adduced.

On appreciation of oral and documentary evidence, the trial Court convicted the appellant for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.5,000/-, in default of payment of fine, to suffer rigorous imprisonment for a period of six months.

At the hearing, Sri K.Sita Ram, learned counsel for the appellant, submitted that while it is the case of the prosecution that the appellant has violently hit the deceased against hard surface by holding his two

legs, as per Ex.P3, post-mortem report, no external injuries were found and that therefore, the case of the prosecution regarding the manner in which the deceased was killed is not supported by medical evidence.

The learned Public Prosecutor submitted that as the accused alone was privy to the whole occurrence, the charge sheet merely referred to the allegations as per the version of the appellant as to the manner in which he has killed his son and that therefore, even if no external injury is found on the body of the deceased, it will not affect the case of the prosecution. He has further submitted that as the confession of the appellant led to recovery of the body, the same is admissible under Section 27 of the Indian Evidence Act, 1872 and that these circumstances are enough to find the appellant guilty of the offence. He has also relied upon the evidence of PW.1, who is no other than the own mother of the deceased, and PWs.2 to 4.

Though PWs.1 to 4 are closely related to the deceased, on a careful scrutiny of their evidence, we have not found any reason to discard their evidence on account of relationship. As came out from the record, suspicion of the appellant about PW.1, his wife and his belief that the deceased was born out of the illicit intimacy between PW.1 and PW.4 appears to be the motive for the appellant to kill his own son.

As regards the submission of the learned counsel for the appellant that no external injury was found on the body of the deceased, as rightly submitted by the learned Public Prosecutor, the charge sheet is based on the confessional statement of the appellant. There was no eye witness to know the manner in which the boy was done to death i.e., whether the boy was hit against the hard surface or not. The fact, however, remains that the medical evidence shows that the death has occurred on account of throttling due to asphyxia and also cerebral haematoma which reveals that the deceased has suffered internal head injury. From this, it is proved that the head of the boy was hit against some object causing internal injury.

In this context, we have read the original of Ex.P4, confessional statement, wherein the appellant has stated that while he was squeezing the neck, the boy started crying and in anger, he has held both the legs of the deceased and hit him against the 'bank' (of the canal) due to which the boy died. Generally, the bank of a canal is refilled with soil. Hence, the surface will not be too hard which might have been the reason for the hit not causing external injury to the boy. At any rate, even in the absence of external injury to the head, the fact that there was internal head injury completely corroborates with the version of the appellant as come out in Ex.P4.

From the perusal of the evidence, we find that the defence has taken inconsistent stand. At one place, it has suggested to PW.1 that she was giving false statement against the appellant as he was not looking after the welfare of the family. Immediately thereafter, it has given another suggestion that she is giving false evidence to cover up the family disputes and that she was deposing at the instance of her relatives. Contrary to the said suggestions, in examination under Section 313 Cr.P.C., answering question No.18, the appellant has stated that there is a dispute between himself and his wife over Acs.2.00 of land which the latter has demanded to transfer in her name and that therefore, a false case was foisted against him. Besides his own confession supported by circumstantial evidence as discussed above, the conduct of the appellant in putting forth these contradictory suggestions and his failure to probablise the cause of death of his own son in any other manner convinced us to believe that it is only the appellant who is responsible for the killing of his son and the prosecution has succeeded in proving his guilt beyond all reasonable doubt.

The prosecution is also able to prove the last seen theory. PW.1 in her evidence stated that on the date of incident, the appellant returned to the house at about 8.00 pm, that after taking supper, she requested the appellant to sleep and that meanwhile he went outside

along with the deceased. That later, she has noticed that her son and the appellant were not coming back to the house till 12.00 midnight. PW.6, the owner of a kirana shop in the village, deposed that on the date of Mallanna Jatara, she was present between 8.00 pm and 9.30 pm in her shop, that the appellant came to her shop along with the deceased at 9.00 pm and went outside without purchasing anything. She has further deposed that at the time of closing her shop, PW.1 came to her shop and asked whether her husband and son came to her shop or not. Nothing could be elicited by the defence to discredit the evidence of both these witnesses. Thus, the appellant was found in the company of the deceased immediately preceding the incident by PW.1 as well as PW.6. These circumstances, coupled with the fact that the appellant himself has gone to the police station within three hours of his being seen with his son and confessing to the Commissioner of the murder prove the case of the prosecution beyond any cavil of doubt.

In the light of the evidence on record as discussed above, we do not find any reason to interfere with the well considered judgment of the trial Court. Accordingly, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

28th March, 2016
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