

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

The Hon'ble Sri Justice G.Shyam Prasad

Criminal Appeal Nos.558, 559 & 560 of 2010

Date: 15.06.2016

Crl.A.No.558/10

Between:

Yadlapalli Samuel @ Syam

.. Appellant/accused No.1

Crl.A.No.559/10

1.Bushiraju Anand and another

.. Appellants/accused Nos.4 & 5

Crl.A.No.560/10

Between:

Kollipara Venkata Padmaja and another

.. Appellants/accused Nos.2 & 3

and

The State of Andhra Pradesh
rep. by its Inspector of Police
Tsundur Police Station
Through Public Prosecutor
Hyderabad.

.. Respondent

Counsel for accused No.1 : Mrs.A.Gayatri Reddy

Counsel for accused Nos.4 & 5 : Mr.TS.Rayudu for Mr.K.Sivaiah

Counsel for accused Nos.2 & 3: Mr.Masthan Naidu Cherukuri

Counsel for the respondent : The Public Prosecutor (AP)

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The Court made the following:

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

These three Criminal Appeals arise out of common judgment, dated 19.3.2010, in Sessions Case No.731 of 2008 on the file of the learned XI Additional District and Sessions Judge (Fast Track Court), Tenali.

Criminal Appeal No.558 of 2010 is filed by accused No.1. Criminal Appeal No.559 of 2010 is filed by accused Nos.4 and 5. Criminal Appeal No.560 of 2010 is filed by accused Nos.2 and 3.

By the afore-mentioned common judgment, the trial Court has found accused No.1 guilty of the offence punishable under Section-364 read with 120-B IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for three months. He was also found guilty of the offence punishable under Section-302 read with 120-B IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default, to suffer rigorous imprisonment for three months. He was also found guilty of the offence under Section-467 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default, to suffer rigorous imprisonment for three months. Accused Nos.2 to 5 were found guilty of the offence punishable under Section-302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each, in default to suffer rigorous imprisonment for three months. They were also found guilty of the offence under Section-364 IPC and sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/- each, in default, to suffer rigorous imprisonment

for three months. It is directed that all the sentences shall run concurrently.

For convenience, the appellants are referred as the accused.

The prosecution case, in brief, is that the deceased worked as an L.I.C. agent during the year 1998. As he has become Pastor, thereafter, he could not continue with the activity of securing LIC policies from the public. Accused No.1, who is the cousin of the deceased, approached the latter and requested to allow him to make policies on behalf of the deceased. The deceased agreed for the said request and accordingly, accused No.1 opened a joint account in the names of himself and the deceased and was crediting the commission amount to that account. Accused No.1 subscribed four LIC policies in the name of the deceased mentioning himself as the nominee with ill motive. Due to ill-feelings between the wives of accused No.1 and the deceased, the deceased started disliking and admonished accused No.1. Accused No.1 has, thereafter, developed grudge against the deceased and decided to do away with him. Accused No.1 was waiting for an opportunity in this regard for claiming the amounts under the policies in which he was shown as nominee.

On 19.2.2007, accused No.1 approached accused Nos.3 and 4 and informed them of his intention to kill the deceased. He has promised accused Nos.3 and 4 that if he succeeds in his plan, he will pay Rs.50,000/- cash to them. Accused Nos.3 and 4 approached accused No.2, on coming to know about her acquaintance with the deceased, and

explained to her their criminal intention. Accused Nos.2 to 4, in turn, contacted accused No.5 and requested for his assistance in their diabolical plan. Accused Nos.2 to 5 accepted the offer of Rs.50,000/- to kill the deceased and hatched a plan with accused No.1 to kill the deceased.

As a part of the plan, accused No.3 received some amount from accused No.1 and one Idea SIM card from PW-9 and handed over the same to accused No.2 for giving information to accused No.1 about the movements of the deceased. As planned, accused Nos.2 and 3 visited the house of the deceased on 23.02.2007 and invited him to their relatives' House warming function to be held on 27.02.2007 at Vijayawada for conducting the prayers. Trusting the said accused, the deceased agreed to conduct prayers at Vijayawada and accused Nos.2 and 3 informed this fact to accused Nos.1 and 4 to 6. Then, all the accused conspired together and hatched a plan to kill the deceased by pushing him from running train. On 26.02.2007 at 9 pm., the deceased left his house by informing his wife-PW2 that he was going to attend a House Warming function at Vijayawada and accordingly, reached Ongole Railway Station. Accused Nos.2 and 3 received the deceased at Ongole Railway Station. Accused Nos.4 and 5 also joined the group. Accused No.2 met accused No.1 and took an amount of Rs.1,500/- through accused No.4 for travelling expenses and to purchase tickets. At 10 pm, accused Nos.2 to 5 and the deceased boarded the train at Ongole Railway Station.

The plan of the accused to push the deceased from the train could not succeed due to heavy crowd in the compartment. Hence, accused No.4 hatched another plan with accused Nos.2, 3 and 5 to kill the deceased on the way and accordingly, persuaded the deceased to get down from the train at Tenali in order to go to Nadigaddipalem to pick up accused No.2's sister from that place to attend the House Warming ceremony at Vijayawada. Accordingly, accused Nos.2, 3 and 5 and the deceased got down from the train at Tenali and boarded the auto of P.W-11 and after getting down from the auto, they walked some distance, which is at a distance of 2 km to Nadigaddipalem to reach Tsunduru Village. When they reached a place at Varahala Canal between M.D.O office and Electrical Sub-Station at Tsunduru Village, accused Nos.4 and 5 picked up one towel, put it around the neck of the deceased and pulled it tightly, as a result of which the deceased lost his breath and fell down in the canal. Thereafter, accused Nos.2 to 5 returned to Tsunduru Railway Station and boarded the auto of PW.7 and reached Modukuru Railway Station where they were seen by PWs.4 to 6. From there, accused Nos.2 to 5 have returned to their village and informed accused Nos.1 and 6 about the death of the deceased and took Rs.15,000/- from accused No.1 through accused No.6 and shared it among themselves towards 'kirai' for committing the murder of the deceased.

On 27-02-2007, at 3.00 p.m., on coming to know about the suspicious death of the deceased, PW.2 and her relatives- LWs.4 to 6 and PW.3 rushed to the scene of

offence at Varahala Canal, Tsunduru, at 7 p.m., and witnessed the dead body of the deceased. Accused No.1 also accompanied the said persons feigning innocence. On the same day, PW.2 rushed to Tsunduru Police Station and lodged a report on suspicious death of the deceased. PW.18- Sub-Inspector of Police registered Crime No.16 of 2007 of Tsunduru Police Station under Section 174 Cr.P.C., issued First Information Report and took up investigation. During the course of investigation, PW.18 visited the scene of offence, got the same photographed through PW.12 in the presence of the mediators- LW.21 and PW.13 under the cover of mediatorsnama duly attested by them and shifted the dead body of the deceased to the District Hospital, Tenali, with the assistance of PWs.1 and 2. On 28.02.2007, at 10.00 a.m., PW.18 held inquest over the dead body of the deceased at Tenali in the presence of the mediators- LW.21, LW.23 and LW.24 and prepared an inquest report duly attested by the said witnesses. He has also examined PWs.1 to 3, LW.2- Village servant and LWs.4 to 6- relatives of the deceased and recorded their detailed statements. He gave requisition to PW.8- Doctor to conduct autopsy over the deadbody of the deceased. PW.8 conducted autopsy over the dead body of the deceased and preserved the Hyoid bone and viscera for sending to RFSL and SFL. During the course of investigation, PW.18 examined PWs.4 to 7, PW.11 and PW.17 and recorded their detailed statements. PW.2 has taken the dead body of the deceased to their village viz., Addanki after post-mortem and accused

No.1 has attended the burial ceremony and invested his personal amount for the entire expenditure of the death ceremony of the deceased.

On 10-04-2007, PW.2 enquired about the movements of accused Nos.1 to 4, who were found absconding from the village and suspecting them, she rushed to Tsunduru Police Station and lodged a report to PW.18. PW.19 took up further investigation and on 11-04-2007, he along with PW.18 started from Tsunduru at 5.00 p.m., reached Addanki at 8.00 a.m., secured LW.25- Village Revenue Officer, Dharmavaram Village, Addanki, and PW.14, took the assistance of the Sub-Inspector and Circle Inspector of Police, Addanki, proceeded to the house of accused No.2, found accused Nos.2, 3 and 5 and arrested them. He has also recorded their confessional statements and seized one cell phone of Sigma Company Limited with Sim No.9885370117 from accused No.2 under the cover of mediatorsnama duly attested by LW.25- VRO and PW.14.

Based on the confessional statement of accused Nos.2, 3 and 5, PW.19 proceeded to the shop of accused No.6 along with PW.14 and LW.27- Village Revenue Officer, Northern Addanki on the same day at 12.45 p.m., arrested accused Nos.1, 4 and 6 and recorded their confessional statements. He has also seized one light yellow colour towel from accused No.4, which was used for commission of murder, and also two cell phones bearing Nos.9848677338 and 9908670759 from accused No.1 and the cell phone bearing No.9848551896 from accused No.6 under the cover of mediatorsnama duly attested by PW.14 and LW.27- Village

Revenue Officer, Northern Addanki. Based on the confessional statement of accused No.1, PW.19 along with his staff, PW.14 and LW.27- VRO proceeded to the house of accused No.1 and seized four LIC policies, one joint account pass book, two envelopes addressed in the name of the deceased and cell phone bearing No.9848670479 from accused No.1 under the cover of mediatorsnama duly attested by PW.14 and LW.27- VRO and sent accused Nos.1 to 6 for remand. On 21-01-2007 at 2.15 p.m., PW.19 got conducted the test identification parade of accused Nos.2 and 3 wherein PW.4, PW.5, PW.6, PW.7 and PW.11 identified them. PW.8 received RFSL and FSL reports and issued Post Mortem report opining that the deceased died due to asphyxia. After completing investigation, LW.32- Circle Inspector of Police, Tenali Rural, filed chargesheet for the offences under Sections 302, 364, 467, 468 r/w 149 and 120-B IPC.

After committal of the case, the learned XI Additional Sessions Judge, Guntur, has framed charges against all the accused. All the accused denied charges and preferred to be tried. During the trial, the prosecution examined PWs.1 to 19, marked Exs.P.1 to P.34 and produced Mos.1 to 5. On behalf of the defence, no oral evidence was let in. However, Exs.D.1 to D.3 were got marked.

On appreciation of oral and documentary evidence, the lower Court acquitted accused No.6 of all the charges and convicted and sentenced accused Nos.1 to 5 in the manner as stated above.

We have heard Smt.A.Gayathri Reddy, learned

Counsel for accused No.1, Sri Masthan Naidu, learned Counsel appearing for accused Nos.2 and 3, Sri Rayalu, learned Counsel representing Sri K.Sivayya, learned Counsel for accused Nos.4 and 5, and Sri Venkateswarlu Posani, learned Public Prosecutor for the State of Andhra Pradesh.

The whole prosecution case is based on circumstantial evidence. Therefore, the motive plays a very important role. We shall, therefore, first examine whether the prosecution has proved the motive. As noted herein before, the prosecution has developed the theory of motive on two grounds viz., (1) That there were ill feelings developed in accused No.1 against the deceased for the latter's frequent chastising him due to quarrels between their respective wives and (2) That accused No.1 has subscribed LIC policies in the name of the deceased by showing himself as nominee with a sinister design and in order to make unlawful monetary gain, he wanted to do away with the deceased.

As regards accused Nos.2 to 6, it is the case of the prosecution that accused No.1 has undoubtedly involved accused Nos.4 and 5 promising them to pay Rs.50,000/-, if they execute the plan of murdering the deceased and accused No.4 in turn roped in accused Nos.2 and 3 on the purported ground that accused No.2 had acquaintance with the deceased and that she will be able to make him accompany them.

A perusal of the evidence on record shows that no witness including PW.2, who is no other than the wife of the

deceased, spoke about the alleged plan of accused No.1 to kill her husband for monetary gain. Only in her cross-examination, she denied the suggestion that accused No.1 never secured LIC policy on behalf of her husband. She has also stated that disputes arose between accused No.1 and her husband one week prior to the death of the latter and that those disputes related to family affairs. She has further stated that she did not exactly see the dispute and that she suspected accused No.1 as during his quarrel with the deceased one week prior to the date of offence, he challenged PW.2 that he will see the end of her husband.

The learned Public Prosecutor submitted that the prosecution theory of motive and the alleged conspiracy was based on Ex.P.18- mediator report wherein the accused were stated to have confessed their commission of offence and the reasons therefor.

Under Section 26 of the Indian Evidence Act, 1872, the confession made by the accused during the custody of the Police is not admissible in evidence and the only exception in this regard is culled out by Section 27 thereof which envisages that if any fact is deposed as consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information whether it amounts to confession or not as it relates distinctly to the fact thereby discovered. Therefore, the so-called confession relating to the conspiracy theory by itself does not constitute proof, more so, in the absence of any evidence let in by the prosecution in that regard. No

doubt, under Ex.P.27- Mahazar, the Police have seized three LIC policies standing in the name of the deceased out of which policy bearing No.840887369, dated 25-11-1999, has lapsed due to non-payment of premium. No independent witness spoke about these policies. PW.19- Investigation Officer has merely spoken about seizure of the three policies. Consequently, neither himself nor any other prosecution witnesses referred to the contents of the three bonds and deposed that accused No.1 was the nominee. In our opinion, the failure of the prosecution witnesses in specifically referring to the nomination of accused No.1 in the three LIC policies is fatal to the theory propounded by the prosecution that accused No.1 has nominated himself in the policies subscribed in the name of the deceased. In the absence of specific evidence by the prosecution witnesses regarding the contents of the three LIC policies, it was not permissible for the Court to look into their contents and draw its own conclusions. Therefore, the prosecution failed to prove that accused No.1 was the nominee for the three policies. In the absence of such proof, the very motive attributed to accused No.1 that he has planned the murder of the deceased for monetary gain also falls to ground.

As regards the alleged family disputes, which were also put forth as a part of the motive, PW.2 herself has not stated in her evidence that any quarrel has taken place between herself and the wife of accused No.1 at any point of time. She has also not stated in her chief-examination that any ill feelings have developed between her husband and accused No.1. It is only in her cross-examination that she

has stated that disputes arose between accused No.1 and her husband about one week prior to the date of offence and that those disputes related to family affairs. In this context, reference to Ex.P.31- First Information Report, which contains the earlier report of PW.1, is instructive. This report was given on 27.02.2007 *i.e.*, the date after the body of the deceased was found. She has stated in her report that on the night of 26.07.2007 at about 10 0' clock, her husband has left the house stating that he is going to the house of a known person in order to attend the house warming function without informing as to the place where he was going; that on 27-02-2007, in the evening at about 3 0' clock, on knowing that her husband was found dead in the canal on the outskirts of Tsunduru village, she has reached there and identified the body of her husband; and that her husband might have fallen in the canal due to slip of his leg accidentally and died due to breathlessness. She categorically stated that she has no suspicion on any one regarding the death of her husband. Based on her report, the Police have registered the case under Section 174 Cr.P.C. It is only about 45 days later *i.e.*, on 10-04-2007, PW.2 came out with a different version wherein she has stated that her husband left the house on 26.02.2007 informing her that he was going to attend the house warming function of the brother of accused No.2 at Vijayawada; that accused Nos.2 and 3 came to their house four days prior to 26-06-2007 and asked her husband to attend the said ceremony; that on that night, accused No.2 informed her by phone that they are going to request her husband to attend

the house warming ceremony on 27.07.2007. On coming to know about the death of her husband, PW.3- her brother in law and accused No.1 along with other relatives went to Tsunduru and saw the dead body of their husband in the outskirts of the village near canal. PW.2, for the first time, has suspected the involvement of accused No.1 and other accused.

In our opinion, the whole conduct of PW.1 in changing her version almost 45 days after she has given her first report itself creates serious doubt about the entire case of the prosecution and thereby, giving rise to a reasonable presumption that the accused were implicated after deliberations and confabulations.

In the light of the above discussion, we are of the opinion that the prosecution has failed to prove the motive as alleged against the accused.

As regards the evidence of the prosecution witnesses examined to connect the accused with the offence, PWs.4, 5, 6 and 7 are important witnesses. Before referring to their evidence, it is necessary to recall the case of the prosecution, as per which the deceased and accused Nos.2 to 5 travelled together from Ongole, got down at Tenali, boarded the auto of PW.11 from Tenali Railway Station and after getting down from the auto, when they reached the place at Varahala Canal near Nadigaddipalem, the deceased was killed and thrown in the canal. It is the further case of the prosecution that after accomplishing the task, all the accused have gone to Brahmamgarigudi at Tsunduru where PW.5, who was acting as a priest in that temple, saw

two male persons and two female persons washing their clothes outside the temple. Thereafter, they have boarded the auto rickshaw of PW.7 at Tsundur Railway Station and got down at Modukuru. It is also the case of the prosecution that on 27-02-2007 at 4.00 a.m., accused No.3 went to the tea Stall of PW.4 at Tsundur Railway Station and purchased four cups of tea. In order to prove this part of the case of the prosecution, the investigation agency has requested the Principal Additional Sessions Judge-cum-Chief Judicial Magistrate, Guntur, for conducting Test Identification Parade of accused Nos.2 to 5. Accordingly, Ex.P.28 proceedings were issued by the said Court. Though permission was given for Test Identification Parade of all the four accused, the fact remains that the Test Identification Parade was conducted by the I Additional Judicial First Class Magistrate, only for accused Nos.2 and 3 and PWs.4, 5, 6 and 11 are shown to have identified them. In his evidence, PW.4 has stated that accused No.3 came to her tea stall and purchased four cups of tea and that she has identified accused No.3 in the District Jail, Guntur. Similarly, PW.5 deposed that out of two men and two women, who came to Brahmagarigudi, Tsundur, two years back during early hours, he has identified accused Nos.2 and 3 in the Test Identification Parade. PW.6, who is a resident of Tsundur Village and coolie, deposed that on 27-02-2007 at about 4.00 a.m., he saw accused Nos.2 to 5 near Brahmagarigudi, while they were washing their hands and legs. He has also stated that he has identified accused

Nos.2 and 3 during the Test Identification parade. PW.7, who has allegedly taken two male and two female persons in his auto from Tsunduru Railway Station to Modukuru, has stated that he cannot identify the four persons whom he has carried in his auto due to long lapse of time. The Police have not made him participate in the Test Identification Parade. PW.11 has deposed that about two years ago, accused Nos.1 to 5 boarded his auto at 2-15 a.m., at Tenali Railway Station; that another person boarded his auto after a while; and that he has dropped them at Railway Station Center.

The evidence of PW.11 to the extent of speaking to the presence of accused No.1 is contrary to the prosecution case as it was never alleged that accused No.1 has accompanied accused Nos.2 to 5 to the scene of offence and actually participated in the offence. This apart, in the Test Identification Parade conducted only for accused Nos.2 and 3, he has identified the said accused. As rightly argued by the learned Counsel for the appellant, when the whole prosecution case hinges the charge of accused Nos.4 and 5 throttling the deceased by putting towel around his neck, its failure to get the Test Identification Parade conducted for the said accused, is highly fatal to its case. When the main perpetrators of the offence were not identified by any of the circumstantial witnesses, identification of accused Nos.2 and 3 who were allegedly found in the vicinity of the scene of offence such as Tsunduru and a far away place at Tenali would not carry the prosecution case anywhere. Even assuming that accused Nos.2 and 3 were at Tenali Railway

Station or at Tsunduru or even at Brahmamgari Temple, that by itself would not conclusively prove the case of the prosecution regarding their participation in the offence. Significantly, no witness spoke about any of the accused being seen in the company of the deceased. The main link in the chain of circumstances viz., participation of accused Nos.4 and 5 in the offence is missing on account of its failure to conduct their Test Identification Parade. When the prosecution has miserably failed to prove the motive and establish the presence of accused Nos.4 and 5 at the scene of offence, beside the fact that no one has seen the accused with the deceased, the whole case of the prosecution falls to ground even though the presence of accused Nos.2 and 3 was established at different places around the scene of offence.

As regards the recoveries, mere seizure of a towel from accused No.4, cell phones from accused Nos.1 and 6, LIC policies from accused No.1 does not prove the guilt of the accused in the absence of prosecution establishing all the links in the chain of circumstances. In *Wakkar and another v. State of Uttar Pradesh*^[1], the Supreme Court reiterated the settled dicta that recoveries of certain incriminating articles under Section 27 of the Indian Evidence Act alone cannot form the basis of conviction unless other relevant circumstances and the chain of events suggest the involvement of the accused. As discussed above, as the prosecution has miserably failed to prove the participation of accused Nos.4 and 5 in the commission of

offence, all other circumstances pale into insignificance and therefore all the accused are entitled to benefit of doubt.

In the result, the Criminal Appeals are allowed. The conviction and sentences recorded against accused No.1 for the offences punishable under Section 302 r/w 120-B, 364 r/w 120-B and 467 IPC and the conviction and sentences recorded against the accused Nos.2 to 5 for the offences punishable under Sections 364 and 302 IPC in the judgment, dated 19.03.2010, in Sessions Case No.731 of 208, on the file of the learned XI Additional District and Sessions Judge (Fast Track Court), Tenali, are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

(C.V.Nagarjuna Reddy, J)

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(G.Shyam Prasad, J)

Dt: 15th June, 2016
dr/lur/bnr

[\[1\]](#) (2011) 3 SCC 306