

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

CRIMINAL APPEAL No.1532 of 2010

DATED:- 29-11-2016

Between:

Pitla Lingam

..... APPELLANT

AND

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

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Sri H.PRAHALADA REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TG)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.1532 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 01.11.2010 in Sessions Case No.45 of 2007 on the file of the IX Additional District and Sessions Judge, Kamareddy, by and under which, the learned Sessions Judge has convicted the appellant for the offences punishable under sections 302 and 201 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- for the offence under section 302 IPC, and rigorous imprisonment for a period of 5 years and to pay a fine of Rs.5,000/- for the offence under section 201 IPC.

2. The case of the prosecution in brief is that on 19.03.2006 at about 3 p.m., PW 1 lodged a complaint before PW 7, the Assistant Sub-Inspector of Police, Machareddy Police Station, stating that on 14.03.2006 she came to her parents' home to celebrate Holy festival along with her son Venu, aged 7 years, that on the next day i.e., on 15.03.2006, her husband, the accused came to her parents' home and forcibly took away her son along with him in the night despite her objection, that she informed the incident to her father PW 2 and when PW 2 enquired about the boy, the accused stated that he sent him with a boy on a cycle, that herself and others found the dead body of her son Venu (hereinafter referred to as "the deceased") in the agricultural well of one Boosa Ramesh situated on the outskirts of Latchapet village. PW 7 registered Cr.No.24 of 2006 under Section 174 Cr.P.C, visited the scene of offence, recorded the statements of the witnesses, held panchanama over the dead body of the deceased in the presence of PW 5 and sent the dead body of the deceased for post mortem examination. PW 6 conducted

autopsy over the dead body of the deceased and opined that the deceased died of asphyxia due to throttling. The section of law was altered from Sec.174 Cr.P.C to 302 IPC. PW 8 arrested the accused on 28.03.2006 and after completion of the investigation, he filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 8 and marked Exs.P1 to P11. On behalf of the accused, no oral or documentary evidence was adduced. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

5. Mr.H.Prahalada Reddy, learned counsel for the appellant, submitted that though the entire case of the prosecution is based on circumstantial evidence the last seen theory was found acceptance of the trial Court and that the prosecution miserably failed to establish the motive by adducing any evidence. Learned counsel further submitted that there are no direct witnesses to the incident and the circumstances relied upon by the prosecution are insufficient to convict the accused. He has further submitted that except the official witnesses, all other witnesses have turned hostile. He has submitted that the trial court failed to see that there is no legal evidence to convict the accused for the offences alleged.

6. The learned Public Prosecutor for the State of Telangana, strongly supported the case of the prosecution and sought to sustain the judgment of the trial Court. He has mainly laid emphasis on the fact that the deceased and the appellant were last seen together on 15.03.2006, that the deceased was found dead on 19.03.2006 and that, therefore, the burden heavily lies on the appellant to explain as to who caused the death of the deceased by throttling.

7. The point for consideration is whether the prosecution proved its case against the appellant beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether it needs to be set aside, modified or varied?

8. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

9. The case of the prosecution is that the accused being the father of the deceased boy, who was aged about 7 years, had forcibly taken him away when the boy along with his mother PW 1 came to the house of PW 2, who was the father of PW 1. This is said to have happened on 15.03.2006. However, on 19.03.2006 the dead body of the deceased boy was found in the agricultural well of one Boosa Ramesh on the outskirts of the village. As per the Doctor, PW 6, who conducted autopsy over the dead body of the deceased, the cause of the death of the deceased is asphyxia due to throttling. As per the charge sheet, the motive for perpetration of the said crime is that the accused-father suspecting the paternity of the deceased boy.

10. The case is based on circumstantial evidence. The main circumstance relied upon by the prosecution is the last seen theory. As has been held by the Hon'ble Supreme Court in *Nizam v. State of Rajasthan*¹ the last seen theory is the important link in the chain of circumstances, but where time gap is long between 'last seen' and discovery of body, it would be unsafe to base conviction. The Apex Court in paras-14 and 18 observed as under:

“14. Courts below convicted the Appellants on the evidence of PWs 1 and 2 that deceased was last seen alive with the Appellants on 23.01.2001. Undoubtedly, "last seen theory" is an important link in the chain of

¹ (2016) 1 SCC 550

circumstances that would point towards the guilt of the accused with some certainty. The "*last seen theory*" holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on "*last seen theory*". "*Last seen theory*" should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

18. In view of the time gap between Manoj left in the truck and the recovery of the body and also the place and circumstances in which the body was recovered, possibility of others intervening cannot be ruled out. In the absence of definite evidence that Appellants and deceased were last seen together and when the time gap is long, it would be dangerous to come to the conclusion that the Appellants are responsible for the murder of Manoj and are guilty of committing murder of Manoj. Where time gap is long it would be unsafe to base the conviction on the "*last seen theory*"; it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. From the facts and evidence, we find no other corroborative piece of evidence corroborating the last seen theory."

11. The material witnesses of the prosecution are PWs 1 and 2, who are the wife and father-in-law of the accused. Both of them turned hostile and resiled from their earlier statements. It is in the evidence of PW 1 that on the date of the incident which happened to be the festival of Holy, the deceased boy went to the pond along with the accused at about 4 p.m, but did not return and three days thereafter, the dead body of the boy was found in the pond. She deposed that no injuries were found on the body of the deceased. PW 1 also denied that she lodged the complaint with the police.

12. Similar is the evidence of PW 2, who also spoke about the fact that PW 1 and her children came to the village for the festival, that the accused also came there, but he does not know and as to under what circumstances his grandson died. He further spoke about the fact that on coming to know about the dead body having been found in the pond, he went there and

identified the same. He also denied his earlier statement as given before the police as in Ex.P3.

13. The other independent witness is PW 3. He also turned hostile and did not support the case of the prosecution.

14. According to the prosecution, the accused is alleged to have made an extrajudicial confession of committing the offence in the presence of PW 4, but PW 4 turned hostile and denied the case. PW 4 stated that at no point of time the accused came to him and made any confession.

15. PW 5 is the witness in whose presence the inquest panchanama on the dead body of the deceased boy was held. PW 6 is the Doctor, who conducted autopsy over the dead body of the deceased. PW 7 is the Investigating Officer.

16. A perusal of the entire evidence adduced shows that there is nothing on record to connect the accused with the crime.

17. In cases based on circumstantial evidence, motive plays a predominant role. In the instant case, none of the witnesses spoke anything about there being any motive for the accused-father to have killed the deceased-son. The evidence of the last seen theory was not brought on record. Even if what PWs 1 and 2 stated is taken to be true, the deceased boy went with the accused-father on 15.03.2016 and his dead body was found on 19.03.2016. This long gap in discovery of *corpus delicti* is not safe to connect the accused with the crime solely on the ground that the deceased boy was taken away by him nearly 4 days prior thereto. For the above mentioned reasons, we are of the opinion that the court below has committed an error in convicting the appellant.

18. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused are set aside.

Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 29.11.2016
Dsr

