

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

CASE No. Criminal Appeal No.1228 of 2010

Between:

Shankar Patel @ Shankar

... Appellant

AND

The State of A.P., rep.by the Public Prosecutor,
Hyderabad

... Respondent

DATE OF JUDGMENT PRONOUNCED: 04th July, 2016

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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| 1. | Whether reporters of local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Your Lordships wish to see the fair copy of the judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**
AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD
+ Criminal Appeal No.1228 of 2010

-
+ DT.04.07.2016

Shankar Patel @ Shankar

...Appellant

Vs.

\$ The State of A.P., rep.by the Public Prosecutor,
Hyderabad

... Respondent

^ Counsel for the Appellant: Ms.Naseeb Afshan

! Counsel for the Respondent: Public Prosecutor

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> Head note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD
Criminal Appeal No.1228 of 2010

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Dated 04th July, 2016

Between:

Shankar Patel @ Shankar

.....Appellant

And

The State of A.P., rep.by
the Public Prosecutor,
Hyderabad

.....Respondent

Counsel for the Appellant: Ms.Naseeb Afshan

Counsel for the Respondent: Public Prosecutor

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**
Criminal Appeal No.1228 of 2010

-
Dated 04th July, 2016

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

The sole accused in Sessions Case No.109 of 2010 on the file of the learned Additional Sessions Judge-cum-Special Sessions Judge for Trial of SC/STs (POA) Act Cases, Nalgonda, filed this appeal against judgment, dated 19.08.2010, in the said sessions case, convicting him for the offence punishable under Section 302 I.P.C., and sentencing him to suffer rigorous imprisonment for life, besides payment of fine of Rs.1,000/-, in default to suffer simple imprisonment for three months.

For the sake of convenience, the appellant hereinafter is referred to as the accused.

The case of the prosecution, in brief, is that on 30.07.2009 at about 12.45 hrs, the accused intentionally murdered his son – Harish (hereinafter referred to as 'the deceased') by rolling his kerchief around his neck and strangulating him. When the deceased fell down, he sat on him and squeezed his throat with hands and thereby, he committed an offence punishable under Section 302 IPC.

PW.1 is the wife of the accused and the mother of the deceased. PW.2 is the nephew of PW.1 and the son of PW.3. As per the prosecution case, the accused was working as a cook in the dhaba

of PW.6. Around 10 to 15 years prior to PW.1 giving her evidence, she married the accused. They had three children, of whom two died due to ill-health and the deceased was the only child alive. That the accused used to quarrel with PW.1 suspecting her fidelity and he also suspected that the deceased was not born to him. That two to three months prior to the incident, the accused left his job. That on the day of occurrence, at about 1.00 p.m., PW.5 informed PW.1 that her son – the deceased was suffering from fever and PW.4 took him to the hospital. Immediately, she went to the hospital and found her son dead with neck injury. PW.2 informed PW.1 that while he was returning to his shop after having meals, he heard the cries of a boy; that he went to the house of PW.1 and peeped through the window and found the accused sitting on the chest of the deceased and strangulating him with a dasti (kerchief); that on seeing him, the accused ran away and that then he took the deceased in his last breath to PW.4 - R.M.P. doctor, who declared the patient brought dead. Later, PW.2 informed PW.5, who was going on the road, about the incident and asked him to inform PW.1. Then, PW.5 informed PW.1, who then rushed to the hospital. Thereafter, PW.1 brought the dead body to her house and lodged Ex.P1 report with Chityal Police Station. PW.14 – the Assistant Sub-Inspector of Police, registered a case in Crime No.158 of 2009 under Section 302 I.P.C., issued Ex.P16 – express FIR and sent the same to all the concerned. On the same day, PW.14 recorded the statement of PW.1, visited the scene of offence, secured the presence of the mediators and prepared rough sketch – Ex.P7 and the scene of offence panchanama – Ex.P6. Then, he handed over the charge to PW.15 – the Circle Inspector, Yadagirigutta. On the next day, PW.15 visited the scene of offence, re-examined PW.1, visited the Government Area Hospital, Ramannapet, conducted inquest over the dead body in the presence of the mediators – PW.10 and LW.13 – Redapaka Muthaiah and sent the dead body for autopsy. He then examined the other witnesses to the

case. On the same day, at about 1.30 p.m., he arrested the accused in the mango grove of one Rajashekar at the outskirts of the village and then recorded his confessional statement in the presence of PWs.11 and 12 – the mediators. He then seized MO.3 – the kerchief at the instance of the accused. Ex.P17 is the admissible portion of the confessional statement of the accused. Ex.P14 is the seizure report. On the next day, he sent the accused to judicial custody.

PW.13 is the Doctor, who conducted autopsy over the dead body of the deceased and found four injuries. He did not mention whether the injuries are ante-mortem or post-mortem in nature. He mentioned the cause of death to be due to strangulation. Ex.P15 is the post mortem report. After receiving the F.S.L. report and the post-mortem report, PW.16 laid the charge sheet.

As the accused denied his guilt, the prosecution examined PWs.1 to 16, marked Exs.P1 to P18 and produced MOs.1 to 3. On behalf of the defence, no oral evidence was let in, however, Ex.D1 – the contradiction in the statement of PW.2 recorded under Section 161 Cr.P.C. was marked. Based on the oral and documentary evidence, the trial Court convicted the accused and sentenced him as stated hereinbefore.

Ms.Naseeb Afshan, learned counsel for the appellant/accused, has submitted that PW.1 did not specifically state in Ex.P1 – the police report that the accused was at home when the alleged offence took place and that this would falsify the whole case of the prosecution that the accused is responsible for causing the death of the deceased. She has further argued that as evident from the evidence of PW.9 - the panch witness for Ex.P6 - the scene of offence panchanama, there was no window to the house of PW.1 and therefore, there was no possibility for PW.2 to peep through a non-existent window and witness the occurrence. She has also argued that as per the evidence of PW.1, herself handed over MO.3 – kerchief (dasti) to the Police and that the recovery of MO.3 set up by the prosecution from the accused is

in the teeth of this evidence.

The learned Public Prosecutor (TS) has submitted that though the prosecution case suffers from embellishments, still it has succeeded in proving the material chain of events, in order to establish the guilt of the accused of the alleged offence and therefore, the trial Court rightly convicted the accused for the offence punishable under Section 302 I.P.C. and sentenced him as stated hereinbefore.

We have given our earnest consideration to the respective submissions of the learned counsel for the parties with reference to the evidence on record.

In order to hold the accused guilty of the offence punishable under Section 302 I.P.C., the prosecution must prove the motive as well as his participation either through direct evidence or circumstantial evidence.

PW.1, who claimed to be the wife of the accused, clearly deposed in her evidence that her marriage with the accused took place around 10 to 15 years prior to her giving evidence; that they were blessed with three children, of whom only the deceased was alive; that the other two children died of illness and that the accused was suspecting her fidelity and his paternity *qua* the deceased. She further deposed that the accused used to quarrel with her in a drunken state for the aforementioned reasons and that three months prior to the incident, the accused discontinued his work in the dabha and remained in the house. She also testified that about ten months prior to her giving evidence, she sent the deceased, who was aged about 10 to 14 years, to the school at 9.00 a.m. and went to attend the coolie work at the house of Sarpanch; that at about 1.00 p.m., PW.5 came to her and informed that the deceased was suffering from fever and that he took him to the hospital of PW.4. That thereupon, she went to the hospital and found her son dead with neck injury. She further deposed that PW.2 – her nephew (her elder sister's son), brought the deceased to the hospital and also informed her that the accused sat on the chest

of the deceased and strangulated him with kerchief. She further stated that thereafter, they brought the deceased to their house, went to the police station and gave Ex.P1 report.

As regards the motive part spoken to by PW.1, PW.6, who was the employer of the accused, and declared hostile, clearly supported the testimony of PW.1 to that extent. While deposing that the accused worked in his hotel for about 10 years, PW.6 stated that the accused married PW.1; that they were blessed with three children; that the accused and PW.1 used to quarrel; that once or twice he went to them and tried to pacify; that two months prior to 30.07.2009, the accused quit the job in the hotel and that he learnt through the villagers that the deceased - son of the accused died. In the cross examination by the public prosecutor, the witness admitted that he stated before the Police that he chastised the accused when he suspected the fidelity of PW.1 on the ground that the deceased was not born to him. He also admitted that due to the said reason, the accused stopped coming to his hotel. This evidence of PW.6 is sufficient to prove that the accused not only suspected the fidelity of PW.1, but also entertained a serious doubt about his paternity towards the deceased. In our opinion, this evidence also proves motive for the deceased to kill the deceased.

As regards the question as to whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, PW.1, who is no other than his wife, clearly stated that her husband killed their son - the deceased. She also testified that PW.2 - her nephew, informed her that he saw the accused sitting on the deceased and strangulating the latter's neck. PW.2 deposed that PW.1 resides behind his house; that on 30.07.2009 at about 12.00 noon, he went to his house for lunch from his TV mechanic shop; that he, after having his meal, came out of the house to go to his shop and that after hearing the cries of a young boy from the back side of his house, he went to the house of PW.1, peeped through the window of her house and found the accused sitting on the chest of the deceased and strangulating him on the neck

with kerchief. He further stated that on seeing him, the accused escaped from the place and that it is he who took the deceased in the last breath on his bike to the hospital, where PW.4 examined and declared the patient dead. The evidence of PW.9 is material in this context. He is one of the panch witnesses to Ex.P6 – the scene of offence panchanama. In his cross examination, he admitted that the house of PW.1 does not have any window. His evidence, thus, proves that PW.1's house had no windows and therefore, there is no possibility for PW.2 to peep through the window and witnessing the accused sitting on the deceased and squeezing his neck.

From the evidence of PW.9, it is evident that the house of PW.1 has no windows. Therefore, there is no possibility of PW.2 witnessing the alleged offence. Thus, to this extent, we are of the opinion that the evidence of PW.2 is not worthy of acceptance. However, at the same time, we cannot ignore his evidence on other aspects, such as, motive, spoken to by him and also his taking the deceased to the hospital of PW.4. As regards the motive part, his testimony corroborates with that of PW.1 and PW.6.

PW.4, who is RMP Doctor, had deposed that on 30.07.2009 at about 12.30 pm when he was in clinic, PW.2 brought one boy aged about 10 years and he found him dead. He has further deposed that there was one ligature mark on the neck of the deceased. No suggestion put to this witness that PW.2 has not brought the deceased to his hospital. The evidence of PW.2 reveals that when he heard cries of a boy, he ran to the house of PW.1 and on seeing him, the appellant escaped. We have no reason to disbelieve this part of testimony of PW.2. The law is well settled that the maxim *falsus in uno falsus omnibus* – false in one thing, false in everything; is not generally applied in Indian context. Therefore, to the extent of PW.2 having the knowledge of motive for the appellant to kill his son, his reaching the house of PW.1 on hearing the cries, on seeing him the appellant escaping and his taking the deceased to the hospital of PW.4, is

worthy of acceptance.

The cause of death is not in dispute. The fact that the deceased was strangled has been admitted by the defence itself as evident from the suggestions given to PW.1. It was in fact suggested to PW.1 by the defence that the deceased died due to ill health and that herself along with PW.2 strangled the deceased with a cut piece with an intention to file a case against the appellant. Of course, PW.1 denied this suggestion.

If we examine Ex.P15 post-mortem report, we find the following injuries:

- “1. U shaped ligature mark of approximately 4 to 5 cms width which extended from left side of the neck front of the neck and to the right side of the neck.
2. Ligature mark is brownish in discoloration.
3. Fracture of the Hyoid Bone.
4. About 6 x 5 cms Blackish discoloured contusion on the left eye.
5. About 4 x 3 cms confusion on the left thigh.”

The learned counsel for the appellant has strenuously submitted that the boy being aged about 10 years, it was not possible for the appellant to strangle him without resistance and himself sustaining some injuries.

From the perusal of the nature of the injuries, it is evident that apart from ligature mark around the neck, there was black contusion on the left eye of about 6 x 5 cms and contusion on the left thigh of 4 x 3 cms. These injuries which are not disputed by the defence clearly suggest that before the deceased was done to death, he was subjected to serious assault. It is not difficult for a grown up man to overpower a boy who is aged 10 years, after giving severe blows on parts, such as, left eye and left thigh. At any rate, the suggestion made by the defence that PWs.1 and 2 have together strangled the deceased after his death in order to falsely implicate the appellant is far fetched. The defence has not produced any evidence whatsoever to prove that the deceased was ill and that any point of time he was

treated by any Doctor.

The following circumstances convince us to hold that it is only the appellant who has killed the deceased:

- (i) that he was continuously suspecting that the deceased was not born to him;
- (ii) that with the said suspicion he was quarrelling with PW.1;
- (iii) that he stopped going to his work at least two months earlier to the incident and was at home continuously drinking alcohol and
- (iv) that he failed to come out with any explanation as to the possibility of anyone else other than himself killing the deceased, more so when the offence has taken at his own house and his presence was noticed by PW.2 at the scene of offence.

The learned counsel for the appellant has submitted that if the accused has caused the death of the deceased, he would not have been available all through along with PW.1 at every place, including hospital where the deceased was taken and also when Ex.P1, report, was given by PW.1. PW.1 has, however, denied the suggestion that the appellant has accompanied her to the police station while giving Ex.P1, report.

Even otherwise, in our opinion, the conduct and behaviour vary from person to person. Therefore, the conduct of the appellant in not absconding from the scene of offence and his continuous presence at all subsequent events cannot be taken as the sole guiding factor to decide upon his culpability or otherwise. If the circumstances are strong to point to the guilt of the accused, such conduct in our view pales into insignificance. On the facts and circumstances of the case and the manner in which the deceased was done to death, we have no reason to doubt that it is only the appellant who has caused the death of the deceased on account of serious suspicion of fidelity of his wife

and his paternity towards the deceased and there was no scope for any one else to cause the death of the deceased.

Coming to the submission of the learned counsel for the appellant that there is a serious contradiction between the evidence of PW.1 and that of PW.15, CI of Police, relating to recovery of MO.3, no doubt we find a serious contradiction between the evidence of PW.1 and Ex.P14, recovery panchanama as spoken to by PW.12, and also PW.15. This aspect is not material for the reason that the cause of death is not in dispute. As noted hereinbefore, it is even the case of the defence as reflected from the suggestion made to PW.1 that the deceased was strangled with a cut piece (a piece of cloth). Therefore, whether PW.1 has handed over MO.3 kerchief to the police or the same was recovered by the latter from the possession of the appellant does not affect the case of the prosecution. The recovery in a criminal case will play a vital role if there is no other strong evidence linking the accused to the offence. Having regard to the various circumstances as discussed above, which strongly prove the involvement of the accused, this aspect has no bearing on the outcome of the case.

For the above-mentioned reasons, the judgment of the lower Court is confirmed and the criminal appeal is dismissed.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

04th July, 2016
GHN/VGB