

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

**AND**

**THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

**CRIMINAL APPEAL No.1323 OF 2010**

**DATED: 15<sup>th</sup> September, 2016**

Between:

Mortha Nageswara Rao

... Appellant

**AND**

The State of Andhra Pradesh,  
Rep. by Public Prosecutor,  
High Court of A.P., Hyderabad

... Respondent

Counsel for the appellant : Sri C.V.Bhanoji Ramars

Counsel for the respondent : Public Prosecutor



**THE COURT MADE THE FOLLOWING**

**JUDGMENT:** (Per Hon'ble Sri Justice G. Shyam Prasad)

1. This Criminal Appeal is arising out of the judgment, dated 08.10.2010, in Sessions Case No.330 of 2009 on the file of the Court of III Additional District and Sessions Judge, East Godavari Division, Kakinada (for short, 'the trial Court') convicting the appellant-A-1 for the offence punishable under Section 302 IPC. The other accused *i.e.*, Accused Nos.2 to 4 were acquitted for the offence punishable under Section 302 read with Section 34 IPC.

2. The case of the prosecution, in brief, is that the deceased was the elder daughter of Godata Satyam (LW-4) of Goodparthi village, Samalkot Mandal; that the marriage of the deceased was performed with the appellant/A-1 of Gonchala village about 20 years back; and that the couple had one daughter and two sons out of their wedlock. It was further the case of the prosecution that the appellant/A-1 developed illegal intimacy with one Mortha Nirmala @ Baby of Ganganapalli village about 8 years prior to the death of the deceased, and due to the same the deceased disputed with the appellant/A-1 and went away to her parents' house and got filed a case for maintenance; that subsequently the appellant/A-1 sent Nirmala to the Gulf countries and the matter was compromised between the appellant/A-1 and the deceased and they were living together at Gonchala village. That the appellant/A-1 obtained a house site patta in the name of the deceased by falsely showing Mortha Nirmala as his wife; that about four months prior to the incident the said Nirmala returned from the Gulf countries; that when the appellant/A-1 handed over the house site patta to Nirmala, the deceased quarreled with the appellant/A-1 and went away to the house of her parents and filed a report against him in Samalkota Police Station; that the appellant/A-1 brought back the deceased to his house by assuring that he will look after

her affectionately, but he failed to do so; that later the deceased reported to the Tahsildar, Kakinada about giving of the house site patta to Nirmala and that she also complained the matter to the Superintendent of Police, East Godavari District, Kakinada; and that the same was enquired into by the S.I. of Police (LW-10) of Sarpavaram Police Station. It is further the case of the prosecution that on the evening of 19-05-2008, the deceased along with her cousin-PW-4 visited the office of the Tahsildar and requested for issue of a duplicate house site patta; that on the intervening night of 19/20-05-2008 at about 1 a.m., when the deceased and the appellant/A-1 were quarreling with each other, PW-2, their younger son went out from the house; that later A-1 to A-4 killed the deceased by beating her with stout steam sticks (Dunga Karralu), that on the morning of 20-05-2008, PW-2 noticed the deceased lying dead on the pail of their house with bleeding injuries on her head; that PW-2 immediately approached PW-1, and informed him about the quarrel that took place between the deceased and the appellant/A-1 on the previous night and raised suspicion against the appellant/A-1; and that the appellant/A-1 and A-2 to A-4 were absconding from the village. That Basing on the report given by PW-1, the police registered a case in Cr.No.30 of 2008 under Section 302 IPC and dispatched the copies of FIR to all the concerned. PW-11, the Inspector of Police, took up the investigation, visited the scene of offence on 20-05-2008 at 11.45 a.m., observed the same in the presence of PW-7 and Mummidi Veerabhadra Rao (LW-15), prepared Ex.P-5 observation report and got the scene of offence photographed through PW-6 and sent the dead body for post-mortem examination. That during the course of investigation, PW-11 examined the witnesses and recorded their statements under Section 161 Cr.P.C.; that on 22-05-2008, the appellant/A-1 surrendered himself before the Court and was remanded to police custody; that the appellant/A-1 confessed to the killing of the

deceased along with A-2 to A-4 by beating her with stout sticks; that in pursuance of the said confession, PW-11 seized MO-4 at the house of the father of the appellant/A-1 under the cover of Ex.P-8-mediators report, in the presence of PW-7 and LW-14. On 31-05-2008 PW-11 arrested A-2 to A-4 at G.P.R. Layout at Panasapadu village, besides the A.D.B. road, in the presence of PW-7 and LW-15, and recorded their confessional statements. That in pursuance of the confession of A-2, at his instance, a stout stick (MO-5) was recovered from a dry grass heap, by the side of branch canal near Satyam Trimurthy Rice Mill, Atchampeta, under the cover of Ex.P-10- mediators report.

3. Prosecution was launched against the appellant/A-1 and three others (A-2 to A-4), who are his brothers. The learned III Additional District and Sessions Judge, Kakinada framed charges against A-1 under Section 302 IPC and against A-2 to A-4 under Section 302 r/w. Section 34 IPC. The accused pleaded not guilty. The prosecution has examined P.Ws.1 to 11 and marked Exs.P-1 to P-16 and M.Os.1 to 6. The defence has not adduced any evidence except getting Exs.D-1 and D-2 contradictions in the evidence of P.Ws.3 and 4, marked.

4. The trial Court, having considered the evidence on record, convicted the appellant/A-1 for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month. The trial Court acquitted Accused Nos.2 to 4 as the prosecution failed to bring home the guilt against them.

5. The present appeal is preferred by the appellant/A-1 being aggrieved by the conviction and sentence recorded by the trial Court against him for the offence under Section 302 I.P.C.

6. The learned counsel for the appellant submitted that the case of the prosecution rests on circumstantial evidence and absolutely, there is no direct evidence to connect the appellant/A-1 with the crime. That P.W.2, who was son of the deceased and the appellant/A-1, was declared hostile to the prosecution and in the cross-examination, he stated that his father and his elder brother went to Hyderabad 10 days prior to 19-05-2008. He has submitted that the appellant/A-1 has taken plea of alibi and the same is elicited in the cross-examination of P.Ws.1 and 2 but the trial Court has not considered this evidence and convicted the appellant/A-1 and as such the conviction is liable to be set aside. The learned counsel further submitted that P.W.3 was mother of the deceased and being an interested witness, her evidence cannot be taken into consideration. That the testimony of P.W.4 is wholly improbable; that P.W.5 was declared hostile to the prosecution, as such their testimony is not worthy of consideration. He has further submitted that all the injuries caused with M.Os.4 and 5 may not cause death and there are many discrepancies and contradictions in the evidence of prosecution witnesses and, therefore, the appellant/A-1 is entitled to be acquitted; and that the trial Court, basing on the statement of the appellant/A-1 recorded under Section 161 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), which is not admissible in evidence, convicted him and therefore the same is liable to be set aside.

7. On the contrary, the learned Public Prosecutor submitted that the prosecution witnesses have amply supported the case of the prosecution in arriving at the conclusion that the appellant/A-1 had murdered his wife and thus committed the offence under Section 302 I.P.C. He has further submitted that the trial Court has properly appreciated the evidence on record and recorded conviction against the appellant/A-1, which does not

require any interference. It is further submitted that the grounds urged by the appellant do not stand to the judicial scrutiny in the light of the evidence of the material witnesses in this case which proved the case of the prosecution beyond reasonable doubt with regard to motive for commission of the offence, being disputes between the appellant/A-1 and the deceased with regard to the house site allotted in the name of the deceased and the disputes between the deceased and the appellant/A-1 with regard to his having illicit intimacy with Mortha Nirmala. He has further submitted that the motive and other circumstances were proved beyond reasonable doubt; that the appellant/A-1, though has taken the plea of alibi, has failed to prove the same and that therefore, there is no need to interfere with the conviction and sentenced recorded by the trial Court.

8. Considering the material on record, the points that arise for consideration in this appeal are as follows:

(1) Whether the prosecution proved the guilt of the appellant/A-1 beyond reasonable doubt for the offence punishable under Section 302 I.P.C.?

(2) Whether the trial Court has erred in convicting the appellant/A-1 for the offence under Section 302 I.P.C. and the conviction recorded by the trial Court is illegal?

9. **POINT Nos.1 and 2:** Both the points go together. It is the case of the prosecution that the appellant/A-1 developed illicit intimacy with one Mortha Nirmala; that he secured a house site patta by showing his wife's name, but gave the said property to Nirmala, due to which disputes arose between them; that a panchayat was held in that regard and that on the

fateful night, the appellant/A-1 killed the deceased by beating her with sticks.

10. P.W.1 is an ex-Member of the 8<sup>th</sup> Ward of Gonchala Grampanchayat, who knows both the parties as they are all residents of the same locality. He was alleged to have given the report to the police. However, this witness did not support the case of prosecution and he was declared hostile. In his cross-examination, P.W.1 stated that on 20-05-2008, A-1 was not in the village as he went to Hyderabad one week prior to 20-05-2008.

11. P.W.2, who was son of the deceased and the appellant/A-1, also did not support the case of the prosecution. He stated in his cross-examination that ten days prior to 19-05-2008, his father-appellant/A1 and his elder brother went to Hyderabad.

12. P.W.3 was the mother of the deceased, and a resident of Gudaparthi of Samalkot Mandal. Her testimony reveals that A-1 developed illicit intimacy with one Nirmala and in that regard, there were disputes between the deceased and the appellant/A-1. That the matter was reported to Sarpavaram Police and police advised them to get the matter settled before the elders of the village, that there was also a dispute with regard to the transfer of house site patta to Nirmala, that the deceased asked A-1 not to continue his intimacy with Nirmala and to perform the marriage of their daughter by remaining in the house, for which the appellant/A-1 stated that he will not allow the deceased to live in the said house. It is also the evidence of this witness that one day prior to 19-05-2008, the Sub Inspector of Police decided that the deceased alone had right in the house and that others are not having any right and that on the very next day at 10 a.m., PW-3 learnt about death of the deceased. The testimony of this witness reveals that there were disputes between

the deceased and the appellant/A-1 with regard to the latter continuing his illicit intimacy with Nirmala and also with regard to the house site patta.

13. P.W.4, a resident of Vetlapalem Village of Samalkot Mandal, deposed that about 8 years prior to the incident, A-1 developed illicit intimacy with one Nirmala due to which disputes arose between the deceased and A-1. He further deposed that about 6 months prior to the incident, the appellant/A-1 sent Nirmala to the gulf countries and lived with the deceased happily for sometime. That one month prior to the incident, Nirmala returned from the gulf countries, that the deceased went to her mother's house in Vetlapalem Village stating that A-1 was not looking after her well, that the deceased gave a report to the Samalkot Police and the police called Nirmala, her parents, A-1 and the deceased for settling the matter and in that connection, some documents were also prepared and at that time, the police have warned Nirmala and her parents not to intervene in the family affairs of the appellant/A-1 and the deceased. PW-4 further deposed that he was informed by the deceased that the appellant/A-1 was not looking after her well; that the deceased informed him that she asked the appellant/A-1 to give the house site property to her which was given by the Government in her name, and that the deceased was told by the appellant/A-1 that the said property was given in the name of Nirmala. That P.W.4 then verified with Mandal Revenue Officer and came to know that A-1, by taking Nirmala to M.R.O. Office and showing her as his wife, had obtained the patta for the said house property, and that later, the deceased gave a complaint to the Superintendent of Police who in turn directed the Sub Inspector of Police to enquire into the matter. PW-4 further deposed that the Sub Inspector of Police, Sarpavaram, inquired the parties and directed the deceased to approach the M.R.O., Sarpavaram, that P.W.4 and the deceased went to the M.R.O.,

Sarpavaram, in the morning on 19-05-2008 and the M.R.O., after verifying with V.R.O., learnt that the property was given in the name of the deceased and asked the deceased to come on the next day so that he can issue patta in her name. PW-4 further deposed that on 19-05-2008 at 7.30 p.m., the deceased contacted him over mobile phone and informed him that A-1 to A-4 and some other persons came to her house and asked him to come to her house, that on the next day morning *i.e.* on 20-05-2008 at 6 a.m., P.W.1 contacted him over phone and asked him to come over there stating that the deceased was in a serious condition and that P.W.4, his junior paternal uncle and 8 other persons including mother of the deceased went in a tractor to the house of the deceased. He further stated that because of the illicit intimacy with Nirmala and the dispute regarding the house site patta, the appellant/A-1 might have killed the deceased. Nothing is elicited in the cross-examination of PW-4 to discredit his testimony.

14. P.W.5, a resident of Ramanayyapeta, was supposed to speak about the illicit intimacy between A-1 and Nirmala but this witness did not support the case of prosecution.

15. P.W.6 is the photographer who had taken photographs of the dead body of the deceased, marked as Ex.P-4, with corresponding negatives. Nothing was elicited during his examination to discredit his testimony.

16. P.W.7, the Village Revenue Officer, Panasapadu Village, Samalkot Mandal, acted as the mediator for the observation report of the scene of offence. His testimony reveals that he found a stick at the scene of offence but the police did not seize any material objects in his presence. This witness was declared hostile to the prosecution as he did not support the version of seizure of the material objects from the scene of offence under cover of observation mahazar. During cross-examination, this witness

admitted the seizure of M.O.4 under cover of mahazar Ex.P-8 at the instance of A-1 in pursuance of his confession. Nothing is elicited in his cross-examination conducted on behalf of the accused to disbelieve his version of recovery of M.O.4 at the instance of A-1.

17. P.W.8 is the medical officer who conducted autopsy over the dead body of the deceased and opined that the cause of death was due to injury to the brain with fracture of skull because of being hit with hard blunt medium to heavy size object or weapon. Ex.P-11 is *post mortem* examination report issued by him. Ex.P-11 disclosed that there were as many as 7 *ante mortem* external injuries and 6 *ante mortem* internal injuries. The opinion of the medical officer clearly reveals that the injuries were caused by a hard blunt heavy sized object. The defence of the accused is that the deceased might have received injuries by a fall on ground and got hit against a stone. This possibility was ruled out by PW-8 by stating that the external and internal injuries stated above are not possible to be inflicted if a person falls on ground and if he is hit with a stone. He has further stated that M.Os.4 and 5 come under medium category of weapons. He also denied the suggestion during cross-examination that if a person is beaten with M.Os.4 and 5, death is not possible. The *lacuna* of the prosecution, in not bringing M.Os.4 and 5 to the notice of the medical officer, was filled up by the defence counsel in the cross-examination. However, on consideration of the entire evidence of P.W.8, it can safely be concluded that M.O.4 was used for causing injuries which are sufficient to cause death of the deceased.

18. P.W.11 is the Investigation Officer, who testified about the investigation done by him. He deposed about his visiting scene of offence and preparing rough sketch of scene of offence mahazar, getting it photographed and the seizure of material objects. Ex.P-5 is the scene of

offence observation report which discloses that M.O.1 bloodstained cement rind, M.O.2 control cement rind, M.O.3 bloodstained quilt with blue and green colour flowers are seized. MO.4 is the stout stick containing bloodstains here and there, with its bark peeling off, which was recovered at the instance of the appellant/A-1 from the house of his father under cover of the mediators report–Ex.P8. At the instance of A-2, another stout stick was recovered under cover of mahazar Ex.P-10. Since A-2 to A-4 were already acquitted by the trial Court, and this appeal is only against A-1, there is not much relevance of M.O.5 in this case. The material objects MOs.1 to 5 have been forwarded to Regional Forensic Science Laboratory, Hyderabad, for chemical analysis report.

19. Ex.P-16 is the R.F.S.L. report which discloses that item Nos.1 and 2 are cement rinds corresponding to M.Os.1 and 2; item No.3 is bloodstained quilt with blue and green coloured flowers corresponding to M.O.3. Item No.4 is one snuff coloured with white and yellow coloured design cotton saree, which was not marked in this case as material object. Item No.5 is one red coloured inner petticoat, not marked in this case. Item No.6 is a piece of gauze cloth with dark brown stains, not marked in this case. There is another stout stick, which was not forwarded to R.F.S.L. The R.F.S.L. report reveals that the blood detected on item Nos.1 and 3 to 7 is of human origin, that the blood group detected on item Nos.3 to 5 is of AB group corresponding to M.O.3 and two other items 4 and 5, and that the blood group on item Nos.1, 6 and 7 could not be determined. Item Nos.4 and 5 were not marked as material objects. The Blood group on item No.7, corresponding to M.O.4, could not be determined. The chemical analysis report clearly reveals that human blood is detected on M.O.4, a stout stick seized at the instance of A-1, and M.O.3 also contains human blood stains.

20. In this case, the acquittal of A-2 to A-4 does not entitle the appellant/A-1 to any benefit of doubt. MO-4 was seized at the instance of the appellant/A-1. The R.F.S.L. Report disclosed that there are bloodstains of human origin on M.Os.3 and 4. The circumstantial evidence of material witnesses P.Ws.3 and 4 disclosed that there were disputes between the deceased and A-1, that they mediated earlier and that the dispute with regard to the house site patta culminated in the commission of the offence. The circumstances in the case, such as, the existence of disputes between the appellant/A-1 and the deceased about the illicit intimacy between A-1 and Nirmala, the seizure of MOs.1 to 3 and 6, the blood detected on M.O.3 as that of human origin and the seizure of M.O.4 at the instance of A-1, which contains human blood stains, would incriminate the appellant/A-1. Apart from that, the plea of alibi taken by the appellant/A-1 that he was not present in the town at the time of incident is not proved by adducing cogent and consistent evidence. There is discrepancy in the evidence of P.Ws.1 and 2 with regard to the duration of the absence of the appellant/A-1 in the town prior to the incident. The defence failed to prove its plea of alibi and hence it goes against the case of the appellant as he did not bring on record the real facts as to who was staying with him in the house, as to what happened during the fateful night and how the deceased received injuries. The non-explanation of these circumstances by the appellant/A-1 would attract the provisions under Section 106 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'). Section 106 of the Act of 1872 reads as under:

*"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*

The deceased being the wife of the appellant/A-1, who was living in his house, he has to explain as to how she sustained injuries to discharge his burden. However, he has failed to discharge this burden by explaining the

circumstances in which the deceased received injuries in his house. Precisely, the defence of the appellant/A-1 is that he was not available in the village on the date of incident and that he went to Hyderabad along with his elder son.

21. In **Neel Kumar Vs. State of Haryana**<sup>1</sup>, it was held at Para No.13 as under:

*"It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material, at his disclosure statement, duly proved is a very positive circumstance against him."*

22. During his examination under Section 313 Cr.P.C., the appellant/A-1 stated that he was not in the town on the date of incident and went to Hyderabad. When the incriminating circumstances are put to the appellant/A-1, he failed to explain the same. While the appellant/A-1 has taken the plea of alibi and that he was not available at home on the fateful night and went to Hyderabad, interestingly, he has not taken this defence at the first instance before the trial Court, but the said plea was developed only during the cross-examination of P.Ws.1 and 2 after the said witnesses were declared hostile. To the question "Do you want to say anything more?", corresponding to question No.51 put to him by the learned Sessions Judge, the appellant/A-1 stated that he was not in the village when the incident occurred, that he went to Hyderabad, that by the time he returned from Hyderabad, his mother and brothers were taken to police station and that therefore he surrendered to police after his return. However, the appellant/A-1 has not produced any cogent and consistent

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<sup>1</sup> 2012 (5) SCC 766

evidence to prove on what date exactly he left the town and where he stayed in Hyderabad and when and how did he return. While P.W.1 deposed that A-1 left the village one week prior to the date of incident, P.W.2 stated that 10 days prior to 19-05-2008, A-1 and his elder brother left for Hyderabad. This inconsistency has not been clarified by adducing any evidence. Having taken the plea of alibi, the burden is heavily on the appellant/A-1 to prove the same by adducing cogent and consistent evidence, but except eliciting certain facts through P.Ws.1 and 2, which are inconsistent with each other, the appellant/A-1 did not choose to bring in any independent evidence on record to prove the plea of alibi. In view of the above discussion, we are of the opinion that the appellant/A-1 miserably failed in discharging the burden on him in proving the plea of alibi.

23. Considering the facts and circumstances of the case, we are of the opinion that the prosecution has proved the guilt of the appellant/A-1 beyond reasonable doubt for the offence under Section 302 I.P.C. Therefore, we do not see any valid grounds in this criminal appeal to differ with the view taken by the trial Court.

24. In the result, the criminal appeal is dismissed confirming the judgment dated 08-10-2010 in S.C.No.330 of 2009 on the file of the Court of III Additional District & Sessions Judge, Kakinada. Pending miscellaneous petitions, if any, in this criminal appeal shall stand dismissed in consequence.

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**C.V.NAGARJUNA REDDY, J.**

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**G.SHYAM PRASAD, J.**

Date: 15-09-2016

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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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**CRIMINAL APPEAL No. 1323 OF 2010**

(Judgment of the Division Bench delivered by  
Hon'ble Sri Justice G. Shyam Prasad)

**DATE: 15<sup>th</sup> September, 2016**

JSK