

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

CRIMINAL APPEAL Nos.887 of 2010 and 1254 of 2011

Date:23.03.2016

Crl.A.No.887 of 2010:

Between:

Peddinti Suribabu,
S/o Krishna

.....Appellant/
Accused No.1

and

The State of A.P., repled by the
Public Prosecutor

.....Respondent

AND

-

Crl.A.No.1254 of 2011:

Between:

Noudasari Sanyasappadu,
S/o Appanna

.....Appellant/
Accused No.2

and

The State of A.P., repled by the
Public Prosecutor

.....Respondent

Counsel for the Appellants: Mr. Challa Srinivas Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

COMMON JUDGMENT:

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

Criminal Appeal No.887 of 2010 is filed by accused No.1 and Criminal Appeal No.1254 of 2011 is filed by accused No.2 against judgment, dated 22.6.2010, in Sessions Case No.31 of 2007 on the file of the learned Sessions Judge, Vizianagaram, whereby both the

accused were convicted for the offences punishable under Sections 302 and 201 I.P.C. and were sentenced to undergo imprisonment for life and also to pay a fine of Rs.1,000/- each for the offence punishable under Section 302 I.P.C. and to undergo rigorous imprisonment (R.I.) for two years and also to pay a fine of Rs.1,000/- each for the offence punishable under Section 201 I.P.C. and accused No.1 was further convicted for the offence punishable under Section 404 I.P.C. and was sentenced to undergo R.I. for a period of two years and also to pay a fine of Rs.1,000/- for the said offence. All these sentences were directed to run concurrently.

2. For convenience, the parties are referred to as they are arrayed before the trial Court.

3. The case of the prosecution, in brief, is that the deceased was the wife of accused No.1 and daughter of P.W.2, a resident of Seethampeta Village. Accused No.1 is the nephew of P.W.2. The marriage between accused No.1 and the deceased was performed about 10 months prior to the date of occurrence. Accused No.1 used to beat the deceased often as he was suspecting her fidelity and the deceased used to tell her mother about her suffering. While so, on 26.02.2006, which was a *Sivarathri* day, accused No.1 and the deceased came together to Seethampeta Village from Gondipalem Village, where they were living, and visited the house of P.W.2. Accused No.1 went to his sister's house situated in Seethampeta Village, where he confided to accused No.2 - his sister's husband about the character of the deceased, his intention to kill her and requested for his help. Accused No.2 readily agreed for this request and suggested that Gantikonda reserve forest area is suitable for such a purpose. Immediately, accused Nos.1 and 2 proceeded to the said forest area on a cycle, made a quick survey of the place and returned to Seethampeta Village by 4.00 p.m. Unaware of the diabolical plan hatched by accused Nos.1 and 2, the deceased went to accused No.1,

who was present in the house of his cousin in Seethampeta Village, and proposed to go to a movie. Accused No.1 gave the deceased Rs.50/- and asked her to wait at Ramakrishna theatre in S.Kota saying that he will come there along with accused No.2. The deceased implicitly believed the words of her husband - accused No.1 and left the place. After entrapping the deceased thus, without losing any time, accused No.1 confabulated with accused No.2 and both of them engineered a plan to kill the deceased, burn away her dead body and also to fabricate a fake scene to hoodwink the Police that, indeed, a gang rape-cum-murder has taken place. In pursuance of their sinister plan, accused Nos.1 and 2 secured ½ litre of kerosene from the tea stall of the latter, reached Devi statue junction in S.Kota, where accused No.2 purchased a torch light and one gunny hand bag at P.W-5's shop, briskly consumed liquor (8 PM brand) at Varalakshmi Wine shop, placed the empty bottle in the gunny hand bag, also purchased two quarter bottles of Royal Choice brandy, secured one empty old Admiral Quarter bottle and placed all of them in the gunny hand bag. Later, accused Nos.1 and 2 approached the pan shop of L.W.9 - Raghavulu, situated opposite to the Wine shop, purchased four 5,000 Gutka packets, one Raja Khaini packet, four water packets, three disposable glasses, one empty gold flake king size Cigarette packet, three Charms cigarettes with packet and placed them also in the gunny hand bag. Then both the accused proceeded to Ramakrishna theatre at 6.30 p.m. and as expected, the deceased was present there.

The prosecution version further goes. Then accused No.1 represented that there was a native medical practitioner near Boddavara, who can treat his gastric problem and also the waist pain being suffered by the deceased and convinced the latter that they can see the movie after visiting him as it happened to be *Sivarathri*, there will be a late night show. The deceased believed his treacherous representations, boarded the R.T.C. bus along with both the accused,

which was seen by P.W.4 and L.W.8 - Ganivada Apparao, and got down at Boddavara. When they were proceeding by walk from there, an auto-rickshaw driven by P.W.6 accosted them, but, accused No.2 sent him away saying that their destination is very near. At the entrance of the forest area, accused Nos. 1 and 2 grabbed two stout sticks, which they kept ready during their earlier recce, saying that they are necessary for defence against wild animals. Accused No.2 was proceeding ahead with the aid of the torch light and the unsuspecting deceased was following him. After passing about one kilometre distance in the forest area, accused No.1, who was following the deceased, rained blows with a stout stick on her head and accused No.2 also followed the same by beating her with a stout stick, due to which, the deceased floundered and breathed her last. Thereafter, accused No.1 removed the diamond shaped Duddulu from her ears, pulled aside her dead body and he along with accused No.2, emptied the kerosene oil over the dead body of the deceased and set her ablaze, in order to efface the signs of identification. Later, accused Nos.1 and 2 consumed the liquor in the two quarter bottles brought by them and then strewn the four empty bottles along with three empty water packets, one king size empty cigarette packet, wrappers of gutka and Khaini packets at the scene. They also discarded the stout sticks, one Charms packet sans two cigarettes out of the three purchased by them there itself. After successfully creating a make-believe scene of rape-cum-murder to put everyone on a wrong scent, both the accused left the place. In the return journey on the way, accused No.1 concealed one gold stud of his wife in the empty kerosene oil bottle in a pit near the road. Both the accused returned to Seethampeta Village at about 8.30 p.m. Accused No.1 changed his wearing apparel at his brother-in-law's house and secreted his pant and shirt in the sugarcane waste (bagasse) heap of the Sugarcane Crusher of L.W.14 - Velaga Satyanarayana, while accused No.2 secreted his pant and shirt underneath a culvert. Thereafter, accused No.1 approached his

mother-in-law (P.W.2) and enquired about the deceased pretending innocence and went to S.Kota, as if in search of his wife. Again on 27.02.2006, at about 7.00 a.m., accused No.1 went to P.W.2 and enquired about the deceased and he also went to several places as if he is sincerely trying to find out the whereabouts of his wife.

While the matter stood thus, P.W.1 – the Forest Beat Officer, Gantikonda reserve forest found a dead body of a female by the side of the pathway on 05.03.2006. From the appearances at the scene, he inferred that she is a victim of brutal murder, informed the same to his superior officer and gave a report to S.Kota Police Station. On the basis of the contents of the report, a case in Crime No.25 of 2006 was registered for the offences under Sections 302 and 201 I.P.C. P.W.19 – the Inspector of Police, S.Kota, took up the investigation, proceeded to the scene of offence on 05.03.2006, examined the decomposed dead body of the deceased and found that the left leg was completely decomposed. He also seized as many as 14 items at the scene of offence.

On 06.03.2006, during further mopping up of the area in search of the missing left leg, the same was found at a distance of one furlong towards east from the first scene of offence. As the news spread far and wide and was also published in newspapers, P.W.2 came to the Police Station along with her son - P.W.3 and identified the belongings of the deceased. While so, both the accused came to know that the Police were making enquiries into the case; that the dead body of the deceased was identified; and that apprehending that their game is up, they approached P.W.10 and L.W.17 – Vechalapu Ramunaidu and confessed the offence. The said persons recorded the confession of both the accused and produced them at S.Kota Police Station at 11.30 hours on 15.03.2006 along with their own report. P.W.19 arrested both the accused and interrogated them separately in the presence of P.Ws.12 and 14. Then, at 15.00 hours, on the same day, both the accused led them to the area where they brutally killed the deceased.

In the first instance, accused No.1 showed the exact scene and from there, he led them to a distance of one kilometre, dug a pit and brought out one gunny hand bag containing one ear stud of the deceased and one kerosene smelling empty bottle of ½ litre capacity. Later, when asked, accused No.2 also led them (P.Ws.12 and 14) to the same place, which was shown earlier by accused No.1, stating that the offence was committed by them at that place. At about 17.00 hours, accused No.1 led them to the Sugarcane Crusher of L.W.14 - Velaga Satyanarayana of S.Kota, showed the (bagasse) heap, brought out his pant and shirt secreted underneath it and stated that he was wearing them at the time of offence. At about 18.00 hours, accused No.2 led them to a culvert on Vizianagaram - S.Kota *tar* road near bulk-milk-cooling Centre, went underneath the culvert, brought out one pant, one shirt and one torch light and produced them stating that he was wearing those clothes at the time of the offence and the torch light was used at that time. Both the accused were brought to the Police Station and produced before the jurisdictional Magistrate with remand report, dated 15.03.2006. The post-mortem of the deceased disclosed that she sustained multiple fractures on her skull and died of those injuries. The seized items were sent to the Regional Forensic Science Laboratory (R.F.S.L.) through S.D.P.O., Vizianagaram for analysis and report. As per the R.F.S.L. report - Ex.P-29, item Nos.1, 2, 3, 4 and 7 contained blood stains and that, it also disclosed that item Nos.10 to 13 (wearing clothes of both the accused seized at their instance) contained blood. The said R.F.S.L. report further disclosed that the origin of blood on item Nos.1 to 4, 10 and 13 is of human and the blood on item Nos.2, 3, 4, 10 and 13 is of 'A' group. P.W.17 – Inspector of Police, Finger Prints Unit, deposed that the finger prints of accused Nos.1 and 2 tallied with the finger prints secured from the scene of offence on 05.03.2006. Thus, both the accused in furtherance of their common intention have committed the offence. After completion of the investigation, P.W.19 filed the charge sheet.

4. In support of its case, the prosecution examined P.Ws.1 to 20 and marked Ex.P-1 to P-29 besides producing M.Os.1 to 29. No witnesses were examined on behalf of the defence, however, Ex.D-1 was marked on its side. On appreciation of the oral and documentary evidence, the trial Court convicted both the accused and sentenced them as noted above.

5. At the hearing, Mr.Challa Srinivas Reddy, learned counsel for the appellants/accused Nos.1 and 2 in both the appeals, has contended that the entire case of the prosecution is cooked up by falsely implicating both the accused, that the prosecution failed to prove the motive alleged in the charge sheet and that the evidence let in by it does not in any manner establish the involvement of both the accused in the alleged offence, leading to the death of the deceased. He has taken this Court through the entire evidence on record to substantiate his submissions.

6. The learned Public Prosecutor (AP) appearing for the respondents in both the appeals opposed the above submissions of the learned counsel for the appellants/accused Nos.1 and 2 and sought to support the judgment of the trial Court.

7. Upon considering the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the prosecution has proved the guilt of the appellants beyond all reasonable doubts.

8. The whole case of the prosecution is based on the circumstantial evidence and the hearsay theory. In the absence of direct evidence, the motive plays a vital role. Therefore, it is necessary to examine whether the prosecution was able to successfully prove the motive alleged against the appellants.

9. As noted above, the motive alleged against the appellants/accused Nos.1 and 2 is that accused No.1 suspected the fidelity of the deceased and he, therefore, sought to get rid of her, with the help of accused No.2. Keeping this in mind, if we carefully scan through the evidence of P.W.2, the mother of the deceased and P.W.3, the brother of the deceased, we do not find a whisper from their evidence about accused No.1 suspecting the fidelity and character of the deceased. Indeed, in her cross-examination, P.W.2 stated that at the time of her visit to the Police Station along with accused No.1 and P.W.3, her son, she had not expressed any doubt against accused No.1. She, however, volunteered that she suspected accused No.1 and informed the same to the Police. Significantly, neither P.W.2 nor P.W.3 gave any report to the Police. It is only, P.W.1, who is the Forest Beat Officer, that has given the report, by stating that while on patrolling duty, he found the dead body of the deceased on 05.03.2006. In order to know whether P.Ws.2 and 3 suspected accused No.1 of commission of the offence, we need to look into Ex.P-13 – inquest report, which is the earliest document and which refers to the opinion of the panch witnesses, including P.Ws.2 and 3 on the cause of death. In paragraph XV of the inquest report, it is stated as under:

“XV. As per the statements of witnesses mentioned in Col No.1 and as per the examinations of the occurrence report, the state of dead body and the other material at the place of the offence, the age of the unknown female may (be) about 20 – 25 years, she might went (have gone) to the place of offence before 3 to 5 days before 05.03.2006 with her known persons. There the persons who accompanied her might have consume(d) alcohol and later there might be an altercation taken place in regard to sexual and other, and they might bet on her head with stick or in any other mode forcibly caused death and later with a view to screen away the evidence to disappear her, pored liquor or any other inflammable oil put fire and burnt the dead body and later they might gone away from there. There is the option of all out mediators.” (A true reproduction of translated version)

Nowhere in Ex.P-13 - inquest report, the names of both the accused were referred to as the persons, who are suspected to have committed the offence. Therefore, the statement of P.W.2 that she suspected accused No.1 and informed the same to the Police appears to be wholly false. Interestingly, in her cross examination, she admitted that the Police have taken one Molleti Bangari Naidu and detained him in the Police Station for four or five days and that she does not know the arrest of both the accused and the release of the said Bangari Naidu.

This statement of the witness throws any amount of suspicion about the conduct of the Police in detaining the said Bangari Naidu in their custody and releasing him after the arrest of both the accused. The prosecution has not placed any material in connection with the detention of the said Bangari Naidu and offered any explanation as to the reason why they have detained and subsequently freed him. Except Ex.P-4 – extra judicial confession statement, no evidence whatsoever is available on record supporting the case of the prosecution, regarding the motive for accused No.1 to brutally kill his own wife. The stoic silence of P.Ws.2 and 3 regarding the alleged motive completely weakens the case of the prosecution in that regard against both the accused. Therefore, we have no hesitation to hold that the prosecution has miserably failed to prove the motive part of its case.

10. We shall now consider, in the absence of the motive, whether by the circumstantial evidence, the prosecution completed all the links in the chain of circumstances to prove the guilt of both the accused.

P.W.1, the Forest Beat Officer, stated that while on patrolling duty, he found the dead body of the deceased with burn injuries on 05.03.2006 at Ambudasu Palem, Gatti Konda reserve forest area. The case of the prosecution is that accused No.1 and the deceased came to the house of P.W.2 on 26.02.2006, which happened to be a *Sivarathri* day.

P.W.2 deposed that after taking the cool drink served by her, accused No.1 went to his sister's house and that her daughter - the deceased went to the house of accused No.1's sister in the evening to get her husband back. At about 8.00 p.m. on that day, accused No.1 came and enquired about his wife. P.W.2 informed him that his wife came to his sister's house. Thereupon, accused No.1 told P.W.2 that the deceased came to him and requested him to take her to a movie and that he informed his wife that they will go to movie on some other day and accordingly, he paid Rs.50/- to her, after which she left. As per the prosecution story, both the accused, to execute the plan they hatched, took the deceased, who was waiting for them, at the cinema theatre at around 6.00 p.m., along with them, on the pretext that they will consult a Doctor near Boddavara.

P.W.4 is an alleged last seen witness. He allegedly saw both the accused along with the deceased at about 6.00 p.m., near Venkateswara Lodge at S.Kota and all of them boarding an R.T.C. bus, by the side of Aruku road. Except the evidence of P.W.4, there is no evidence on record to prove that the deceased accompanied both the accused. In his chief examination, P.W.4 deposed that at 6.00 p.m., he reached Venkateswara Lodge at S.Kota along with one Appa Rao, who was examined as L.W.8 by the Police and given up during the trial, and both of them while taking tea, noticed both the accused and the deceased standing at a distance to the tea parlour and also their boarding an R.T.C. bus for Aruku. He further deposed that one week later, he came to know that the deceased was no more through newspapers, and immediately, he visited Seethampeta, a part of S.kota, and that the Police examined him and recorded his statement. He also stated that he knew both the accused and P.Ws.2 and 3 and that the deceased is related to her. In his cross examination, he admitted that his family and the family of P.W.2 are in close touch with each other. He further admitted that three or four days after the deceased and accused No.1 visited the house of P.W.2, the latter

informed him that the deceased and accused No.1 came to her house in connection with *Sivarathri* festival and that he did not inform P.W.2 about his noticing both the accused and the deceased at tea parlour and their leaving for Aruku in an R.T.C. bus.

P.W.2 deposed in her evidence that after the deceased went missing, for all the nine days till her body was found, herself and all her relatives including P.W.4 have jointly searched for her. If really P.W.4 was a truthful witness and saw both the accused and the deceased together and their boarding bus on 25.02.2006, being very closely related to the deceased as well as P.Ws.2 and 3, he would have informed this fact to P.Ws.2 and 3, the moment he came to know that the deceased went missing. It was highly unnatural for him to have just searched for the deceased along with P.Ws.2 and 3 in vain, without disclosing this vital fact, which would have immediately unearthed the alleged guilt of both the accused. Not only that P.W.4 did not disclose this fact, he has not even suspected both the accused of their role in the missing of the deceased.

In deed, in his evidence, P.W.3, the brother of the deceased, deposed that his mother (P.W.2) asked him and accused No.1 to search for the deceased at Gnanapuram. He further deposed that he along with accused No.1 left their house and went in search of the deceased and they made search for four days and during all those four days, accused No.1 was in their house only. If accused No.1 was involved in the killing of his wife and he was seen by P.W.4 last, there is no reason whatsoever for P.W.4 for not insisting on accused No.1 to reveal the whereabouts of his wife having been in her company immediately preceding the time when she was found missing.

Further, P.W.4 allegedly saw both the accused in the company of the deceased at 6.00 p.m. As per the version of P.W.2 at 8.00 p.m., accused No.1 came and enquired about his wife with her. In the charge sheet, it was alleged that both the accused were at Ramakrishna theatre at 6.30 p.m. and thereafter, they have boarded

the bus, got down at a place called Boddavara and walked for about one kilometre from there in the reserve forest where they allegedly killed the deceased. It is just, not possible for anyone to travel a considerable distance by bus, walk for two kilometres to and fro and again catch the bus back to S.Kota and reach Seethampeta village by walk covering a distance of about four kilometres and appear before P.W.2 at about 8.00 p.m. From these facts, the case, as set up by the prosecution, appears to be wholly unrealistic. Hence, we hold that the prosecution utterly failed to establish the last seen theory set up by it through P.W.4.

11. The learned Public Prosecutor made heavy reliance upon Ex.P-4 – the alleged extra judicial confession statement. P.Ws.10 and 11 are the persons before whom both the accused have allegedly confessed and their confession was allegedly reduced into writing. Interestingly, P.W.10 admitted in his cross examination that they did not obtain the signatures of both the accused on Ex.P-4. More importantly, he admitted that as per the information furnished by both the accused in the presence of the Circle Inspector, he recorded their confessional statements. We have also perused the original of Ex.P-4, which shows that except the writing of the names of both the accused on the left side margin of every page horizontally, we do not find their signatures. Thus, Ex.P-4 supports the admission of P.W.10 that both the accused have not signed on it. Further, from the admission of this witness that it is proved that Ex.P-4 was prepared in the presence of the Inspector, and hence, it is hit by Sections 25 and 26 I.P.C. as the alleged confession is in the presence and under custody of the Police Officer. Furthermore, there is a serious doubt about the veracity of the alleged confession for the reason that the same was made 10 days after the body of the deceased was found and the incriminating material was seized. It is nobody's case that by 15.03.2006, when the alleged confession was made, both the accused were suspected of the

murder. On the contrary, as spoken to by P.W.2, one Bangari Naidu was detained in the Police custody on suspicion for four or five days. Therefore, there was absolutely no reason for both the accused to voluntarily go before P.W.10, according to whose evidence, he only had some facial acquaintance with accused No.1 and no acquaintance at all with accused No.2. There was, hence, absolutely no necessity for both the accused to have gone to P.Ws.10 and 11 and confess about the alleged offence. Evidently, after recovering the body along with the liquor bottles and empty gutka packets at the scene of offence, the prosecution appeared to have weaved a story and implicated both the accused.

12. One other aspect, which creates a serious doubt on the prosecution version, is regarding the timing of detection of the body of the deceased, which is reflected from the evidence of P.W.2. In her evidence, P.W.2 stated that by Saturday, she came to know that her daughter was murdered through newspapers. As per her version, on *Sivarathri* day which happens to be a Sunday i.e., 26.02.2006, her daughter went missing and by Saturday i.e., 04.03.2006, she came to know about the death of her daughter through newspapers. However, P.W.1 came out with a contra version as per which, on 05.03.2006 i.e., on Sunday, he found the body of the deceased. Thus, there is a serious material discrepancy in the version of the prosecution witnesses on the date on which the body was found. This also throws serious suspicion on the entire case of the prosecution.

13. As regards Ex.P-29 – R.F.S.L. report, which found that the finger prints of both the accused tallied with the empty liquor bottles, in Section 313 Cr.P.C. examination, both the accused stated that the Police took their finger prints on the empty bottles in the Police Station. Having regard to the various suspicious circumstances referred to above, no reliance could be placed on the said report. In the above facts and circumstances, we have no hesitation to hold that

the prosecution has failed to establish strong motive for both the accused to kill the deceased and also the circumstances to establish the guilt of both the accused beyond all reasonable doubts. On the contrary, the investigating agency appeared to have suppressed the real culprits and falsely implicated both the accused, based on the incriminating features found at the scene of offence and tried to connect them with both the accused.

14. For the aforementioned reasons, the conviction and sentence recorded against both the accused are liable to be set aside.

15. In the result, both the Criminal Appeals are allowed.

The conviction and sentence recorded against the appellants/accused Nos.1 and 2 in judgment, dated 22.06.2010, in Sessions Case No.31 of 2007, on the file of the learned Sessions Judge, Vizianagaram, for the respective offences punishable under Sections 302 I.P.C., 201 I.P.C. and 404 I.P.C. are set aside and the appellants/accused Nos.1 and 2 are acquitted from all the charges of which they are charged with. Consequently, the appellants/accused Nos.1 and 2 are set at liberty and they shall be released forthwith, if they are not required in connection with any other offence. The fine amount, if any, paid by the appellants/accused Nos.1 and 2 shall be refunded to them.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

23rd March, 2016
DR/GHN