

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

CRIMINAL APPEAL No.792 of 2010

Date:17.02.2016

Between:

Bharathi Venkatesu @ Venkanna

**.....Appellant/
Accused**

And:

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

.....Respondent

Counsel for the Appellant: Mr.D.Srinivasa Rao

Counsel for the Respondent: Public Prosecutor (Andhra Pradesh)

The Court made the following:

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

The sole appellant in Sessions Case No.329 of 2008 on the file of the Principal Sessions Judge, West Godavari at Eluru filed this Criminal Appeal assailing the

judgment, dated 10-03-2010, whereby he was convicted and sentenced to imprisonment for life and also to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for one month.

The case of the prosecution in brief is that the appellant and the deceased were man and wife. They had two children, of whom, P.W-4 is their daughter. On 16.7.2007, when P.Ws.1 to 3 were at Panchayat Office of Mupparthipadu Village, which is situated 2 kms away from Kesavaram Village-the native Village of the appellant and the deceased, the appellant along with his two relatives approached them, confessed that he has killed his wife and explained the manner of killing; that the same was reduced into writing, which was marked as Ex.P-1; and that the thumb impression of the appellant was obtained thereon. P.Ws.1 to 3 prepared a report and submitted the same to the Police, while handing over the custody of the appellant to them. As per Ex.P-1-report, the appellant allegedly confessed as under:

“Originally I belong(s) to Pali village, Attili Mandal, I married about 14 years back with Savithri daughter of Kavali Musalamma resident of Gannavaram, East Godavari District. Since then we are residing at Pali Villagle. About 3 years back we shifted from Pali village of Kesavaram village of Ganapavaram Mandal and residing on the bund of Perantamma tank. I got two children. One female by name Mariyamma, male by name Yesudasu age about 3 years. I got suspicion on my wife as she is doing brothel. Regarding that many times we quarreled each other. We are residing in thatched house. My left eye is not visible. When I am doing my house work some stick attacked to my right eye, since 4 days water coming from the right eye. On 16-07-2007 at 9-00 AM. myself and my wife went to Government Hospital, Tanuku on my cycle, then on the information received from the Hospital as no doctor and waited till evening at

Hospital. we went to picture 1st show "Sivaji" (Rajanikanth) at Lakshmi Theatre, after that we returned back from Tanuku to Kesavaram on the way we drank tea and at about 11-00 P.M. we are on the way from Venkatrajapauram to Mupparthipadua, reached at Kotta Kalva culvert, I suspected my wife and asked about her illicit affairs, then she abused me. Then I waited with a view to Kill her, and I pounced her and caught hold of her hair and pulled down and beat her and tied her neck with her sari and dragged into the Kotta Kalva and trampled till her death. I decided she died then I proceeded my house on cycle. Then my children woke up and asked me, where is mother, on that she went to natural calls. On the next day Sunday morning my children woke up and asked where is mother. I said she went to her native place and surrounding people asked about my wife for that also I said that she went to native place. Then I realized due to murdered my wife and came to panchayat office of Tallkapalem on 16-07-2007 at 9-00 P.M. and stated Killed my wife."

Based on Ex.P-1, a case in Crime No.78 of 2007 of Ganapavaram Police Station was registered for the offence under Section-302 I.P.C and the same was submitted to the Court of the Additional Judicial First Class Magistrate, Tadepalligudem along with Exs.P-1 and P-2. Upon intimation, on the morning of 17.7.2007, P.W-12-Circle Inspector of Police went to the scene of offence and got prepared Ex.P-5-scene observation report and Ex.P-12-rough sketch of the scene of offence in the presence of the mediators (P.Ws.7 and 8). P.W-12 got the dead body of the deceased photographed through P.W-6 and held inquest on the dead body of the deceased in the presence of P.Ws.7, 8 and others, besides the blood relatives of the deceased. Ex.P-6 is the inquest report. He has seized M.Os.1 and 2. Thereafter, the dead body of the deceased was sent to

t h e Government Hospital, Tadepalligudem for post-mortem. P.W-12 recorded the statements of some witnesses, proceeded to the house of the deceased, examined P.W-4 and recorded her statement. On 17.7.2007, the appellant was sent to judicial custody. After completion of the investigation, the charge sheet was laid.

The prosecution has examined P.Ws.1 to 13 and marked Exs.P-1 to P-12 besides M.Os.1 and 2. No evidence was let in by the defence.

On appreciation of the evidence, the Sessions Court has convicted and sentenced the appellant as noted supra.

Mr.D.Srinivasa Rao, learned counsel for the appellant, submitted that the case is based purely on circumstantial evidence; that the prosecution failed to establish several missing links; and that therefore, it is wholly unsafe to convict the appellant based on insufficient, inadequate and unconvincing evidence. He has taken the Court through the oral evidence, in general, and that of P.Ws.1 to 4 in particular, and submitted that the prosecution failed to bring home the guilt of the appellant beyond reasonable doubt.

Opposing the above submissions, learned Public Prosecutor (Andhra Pradesh) submitted that the appellant has confessed before P.Ws.1 to 3 about the commission of the offence; that the said confession was reduced into writing and was marked as Ex.P-1, which coupled with the evidence of the said witnesses amply proves the guilt of the appellant; and that the trial Court has very rightly convicted the appellant and sentenced him for the offence under Section 302 IPC.

We have carefully gone through the entire evidence.

It is the case of the prosecution that the appellant has suspected the fidelity of his wife and killed her by throttling and throwing her in the canal.

P.W-1, who is a native of Muppathipadu Village, which is neighbouring to Kesavaram Village-the native place of the appellant and the deceased, deposed in his evidence that on 14.7.2007, at about 7 pm., when he along with P.W-2 were at the Panchayat Office of Muppathipadu Village, the appellant came there along with his two relatives and confessed that he has killed his wife. In his chief-examination, PW.1 stated that he knows the appellant. However, in the cross-examination, he admitted that prior to the date of the incident, he does not know the identity of the appellant and his wife. From the latter statement of PW.1, it is clear that he did not know the appellant and his wife prior to 14-07-2007. Therefore, it is highly improbable that the appellant, who is a stranger to PW.1, would go all the way to a neighbouring Village and confess to his committing the offence. This material contradiction in his testimony on his acquaintance with the appellants throws any amount of suspicion on the creditworthiness of PW.1.

PW.2, who was stated to have been present along with PW.1 when the appellant has allegedly confessed about the commission of the offence, has turned hostile. Though in his cross-examination, he has admitted that Exs.P.1 and P.2 contained his signatures, he has deposed that PW.12 came to his house and recorded his statement.

PW.3, who was also allegedly present along with PWs.1 and 2 when the alleged confession was made by the appellant, admitted that he has not signed Exs.P.1 and P.2. Moreover, PW.1 in his evidence has not spoken to the presence of PW.3. These facts would cast

a serious cloud on the veracity of the testimony of PW.3 and his presence when the appellant has allegedly made his confessional statement.

The only evidence we are left with for connecting the offence to the appellant is PW.4, who is none other than his own daughter. In her chief-examination, PW.4 deposed that her parents were living amicably and that they left the village for treatment to the eye of his father on the morning of 14.07.2007. She further deposed that on the late night of the same day, her father returned home and when she and her brother asked him about their mother, he informed that she went to answer nature calls and that on the next day morning, he informed them that their mother went to some other village. She also deposed that herself and her younger brother are living with the appellant and that the latter is looking after their welfare. As she has stated that she was not examined by the police, she was declared hostile. However, in her cross-examination, she stated that she was examined by the police at her house.

Ex.P.7-Post-Mortem Certificate reveals that there were no external injuries present over the dead body of the deceased; that there was fracture of the hyoid bone and cornea junction; and that all other neck structures were normal. The opinion about the cause of death of the deceased was not given as the Regional Forensic Science Laboratory report was awaited.

In his evidence, PW.9-doctor opined that the deceased would have died due to asphyxia caused due to drowning and as regards, his final opinion he has stated as under:

“My final opinion is Ex.P.10. As per the contents of Ex.P.9, there is only cartilaginous separation one side of hyoid bone and there was no fracture of hyoid bone.”

On a careful analysis of the evidence on record, it appears that the appellant left the village along with his wife for treatment to his eye and what transpired thereafter was not spoken to by any witness. Though reliance is placed on Ex.P.1- the alleged extrajudicial confession of the appellant, the prosecution failed to provide several missing links in its case. For various reasons, which have been mentioned herein before, the evidence of PWs.1 and 3 is not trustworthy. Therefore, the case set up by the prosecution that the appellant has voluntarily approached PWs.1 to 3 and confessed his offence is not worthy of acceptance. However, from the evidence of PW.4, which could be safely relied upon, but for a small inconsistency in her stand relating to her examination by police, it appears that the appellant and the deceased were last seen on the morning of 14.07.2007.

The learned Counsel for the appellant has placed reliance on the judgment of a Division Bench of this Court in **Gotte Peddulu vs. State of Andhra Pradesh rep. by P.P. Hon'ble High Court of A.P., Hyderabad**^[1] in support of his submission that merely because two persons were found together at a particular time and sometime thereafter, one of them was found dead, the inevitable conclusion is not that the other person is the author of the crime and that there must be further evidence that the accused and the deceased were together immediately before the death of the deceased.

No doubt, in the present case, the deceased was none other than the wife of the appellant and the onus lies on him to explain the whereabouts of his wife. In a case based on circumstantial evidence, motive plays a

very important role. The Prosecution based its case on the appellant suspecting the fidelity of his wife as motive for the murder. If we discard the alleged extra judicial confession, which we indeed did, there is absolutely nothing in evidence to prove motive for the appellant to kill his wife. Far from there being any such evidence, the accused's own daughter, P.W-4, has deposed in her evidence that her parents were living amicably. If the appellant had suspected the fidelity of his wife, there would have been constant quarrels at home. Though P.W-4 was treated as hostile by the prosecution, it was not even suggested to her that she was deposing falsely and that her parents were constantly quarrelling at home. In this context, we find it relevant to refer to the deposition of PW.9- Doctor. He has deposed that he has not found any external injuries over the dead body of the deceased and opined that the deceased would have died due to asphyxia caused due to drowning.

In our view, the medical opinion given by PW.9 belies the entire case of the prosecution that the appellant caused the death of his wife. It would have been quite probable that the death would have occurred by accidental drowning. If the appellant had used force on the deceased before she drowned, there would have been some external injuries as, the latter would have definitely resisted the attempt of the appellant when he attempted to cause harm to her either by throttling her neck or by pushing her into the water. As PW.9 opined that there were no external injuries on the dead body of the deceased, the possibility of the appellant throttling her neck or pushing her into water is ruled out.

In his Section-313 Cr.P.C. statement, in answer to Question No.18, the appellant stated that the deceased left him informing that she is going out of Village. We are

conscious of the fact that no specific evidence was adduced by the appellant to prove this stand either by leading evidence or by way of suggestions put to the prosecution witnesses, which raises a serious suspicion in the mind of the Court against him. But, howsoever serious it may be, suspicion cannot take the place of proof, more so, to be relied upon to convict a person for the offence of murder. In the absence of establishment of any motive for the appellant to kill his wife and based on weak circumstantial evidence and only applying the last seen theory, this Court feels, it is not safe to convict the appellant for the offence of murder. As the prosecution failed to prove the guilt of the appellant beyond reasonable doubt, we are inclined to give the benefit of doubt to him.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 10.03.2010, in Sessions Case No.329 of 2008 on the file of the learned Principal Sessions Judge, West Godavari at Eluru, for the offence punishable under Section 302 I.P.C., are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE M.S.K.JAISWAL

*17th February, 2016
DR/lur*

[\[1\]](#) 2006 (3) ALT (Criminal Law Journal) 387 (DB)