

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

Criminal Appeal No.791 of 2010

Date:16th March, 2016

Between:

Dara Suresh,
S/o Subba Rao

.....Appellant

And:

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

.....Respondent

Counsel for the Appellant: Mr. N.Ravi Prasad

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL
Criminal Appeal No.791 of 2010**

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Dated 16th March, 2016

JUDGMENT: (per CVNR, J)

This Criminal Appeal is filed against judgment, dated 25.03.2010, in Sessions Case No.199 of 2009, on the file of the learned Sessions Judge, Prakasam District, Ongole, whereby the

appellant was convicted for the offences punishable under Sections 498-A and 302 of IPC and sentenced to undergo rigorous imprisonment for one year, and life imprisonment and to pay a fine of Rs.100/-, in default of payment of fine, to undergo simple imprisonment for ten days for the said two offences respectively.

The case of the prosecution, in brief, is that the deceased was the wife of the appellant. They were married for 14 years and they had two sons. The appellant was in the habit of sending the deceased to her parents' house for bringing money. Due to serious differences between them, the deceased along with her two sons was living in her parents' house. On the fateful day, i.e., on 28.04.2009, the deceased was attending to tobacco grading work in the company of one Sanjeeva Reddy on daily wages along with PW.3. In order to eliminate the deceased, the appellant went to the said company, where the deceased was working, induced her to come with him by stating that his paternal grandmother died, after taking her to the nearby Eucalyptus garden of Mangaladripuram Village, he stabbed the deceased indiscriminately with a sharp edged knife causing bleeding injuries to vital organs, brutally killed her and left the place by leaving the dead body of the deceased in the fields of Yerrajarla Village. At around 3.00 pm., on the same day, the appellant has made extra-judicial confession to PW.6. On the information given by PW.6, the father and other relatives of the deceased searched for her, but they could not trace her.

On 29.04.2009, at 11.00 am., the Village Servant of Yerrajarla Village (LW.9) heard rumours about the dead body of the deceased and found the same with multiple bleeding injuries in the Eucalyptus garden of one Somaiah in a pool of blood. The father and other relatives of the deceased went to that place and found the dead body of the deceased in a pool of blood.

PW.5 submitted a written report, Ex.P2, to PW.9, upon which, the latter has registered the same as case in Crime No.198 of 2009 of

Ongole Taluk Police Station for the offence under Section 302 of IPC on 29.04.2009 at 15.00 hours, prepared Ex.P9, FIR, and submitted copies of the same to all the Officers concerned including PW.10, who investigated the case. During the course of his investigation, PW.10 visited the scene of offence on 29.04.2009, examined the same in the presence of PWs.5 and 11, drafted Ex.P3, observation report, duly attested by the said witnesses and got the scene of offence photographed by PW.7. He has prepared a rough sketch of the scene of offence, seized the Material Objects under the cover of mediators report from the scene of offence and shifted the dead body of the deceased to the mortuary of the Government Hospital, Ongole for preservation and protection.

PW.10 has examined LWs.1, 9 and PWs.5, 7 and recorded their statements under Section 161(3) Cr.P.C. During the course of his further investigation, on 30.04.2009, PW.10 held inquest over the dead body of the deceased in the mortuary of the Government Hospital, Ongole in the presence of LWs.1 to 9, who include PWs.1, 4 and 6 and the panchayatdars, PW.5, LWs.1 and 12 and forwarded the dead body of the deceased to PW.8 for post-mortem examination. He has drafted Ex.P4, Inquest report, duly attested by PW.5 and LWs.1 and 12.

During the course of his further investigation, PW.10 arrested the appellant on 04.05.2009 at about 11.00 am., at Vetapalem Village and recorded his confessional statement in the presence of PW.5 and LW.1 under the cover of mediators report duly attested by the said witnesses. On the strength of the confessional statement made by the appellant, PW.10 seized the blood stained knife and blood stained clothes of the appellant from his possession in Yerrajarla Village near Cross (Siluva) at the small hillock in the presence of PW.5 and LW.11 under the cover of the mediators report, Ex.P5. PW.10 has produced the appellant before the jurisdictional Magistrate, who remanded him to District Jail, Ongole. Later, PW.10 has forwarded the seized Material Objects to the Regional Forensic Science Laboratory, Guntur for

chemical analysis, which has examined the same and issued Ex.P11, report. PW.10 produced the dead body of the deceased before PW.8 for post-mortem, who accordingly held the post-mortem and issued Ex.P8, Post-mortem certificate, wherein he has opined that the deceased appeared to have died due to shock and haemorrhage due to multiple injuries between 24 and 36 hours prior to the post-mortem examination. On completion of the investigation, PW.10 has filed the charge sheet.

The appellant has pleaded not guilty and claimed to be tried. Accordingly, trial was conducted, during which, the prosecution has examined PWs.1 to 10 and marked Exs.P1 to P11 besides producing MOs.1 to 15. No evidence was adduced on behalf of the defence.

Based on oral and documentary evidence, the trial Court convicted the appellant and sentenced him as stated hereinbefore.

Sri N.Ravi Prasad, learned counsel for the appellant, submitted that the prosecution case is based on circumstantial evidence and therefore, motive plays an important role; that the prosecution miserably failed to prove the motive of the appellant; that the trial Court has based its conviction on the evidence of PW.3 by applying Section 106 of the Indian Evidence Act, 1872 and also the evidence of PW.5 in whose presence recovery of the Material Objects was made based on the alleged confessional statement of the appellant; that the evidence of the said witnesses does not inspire confidence at all; that the conduct of the prosecution witnesses is highly artificial; that though PW.1, who was none other than the paternal uncle of the deceased and who allegedly knew about the offence at around 4.30 pm on 28.04.2009, has not bothered to give any report to the police at any point of time, either before or after tracing of the dead body of the deceased and that it is only based on a report given by PW.5 at 3.00 pm., on 30.04.2009, that the FIR was registered; and that the last seen theory could not have been applied based on the evidence of PW.3 as on her own showing, she has seen the appellant taking the deceased

along with him on 28.04.2009 at around 11.00 am, by which time, the deceased was allegedly found missing.

Opposing the above submissions, the learned Public Prosecutor (AP) has strenuously tried to sustain the judgment of the trial Court by referring to the evidence on record.

Having regard to the respective submissions of the learned counsel for the parties, the point that needs to be considered is whether the prosecution was able to prove the guilt of the appellant beyond all reasonable doubt.

As rightly submitted by the learned counsel for the appellant, in a case based on circumstantial evidence, motive plays a very important role. The case of the prosecution, as projected through the evidence of PWs.1 and 2, is that the failure of the parents of the deceased to meet the unjust demand of the appellant for money is the motive for his committing the offence. Both these prosecution witnesses spoke about the appellant making demands for money and sending the deceased to her parents' house.

The best person to speak about the demand for money by the appellant was the father of the deceased, whose statement was recorded by the Police as LW.1. However, during the trial, the trial Court observed that he was not in a fit condition to depose. Therefore, the prosecution did not have the benefit of his evidence.

PW.1, who is the brother of LW.1, i.e., the paternal uncle of the deceased, spoke about the alleged demand for money by the appellant. He has deposed that he has paid the money to the appellant thrice. However, he has failed to give the details of the quantum of money and the approximate time when he has paid the money to the appellant. In his cross-examination, he has admitted that no police complaint was made against the appellant about his ill-treatment of the deceased or demand for money.

PW.2, who is the son of the brother of LW.1, also tried to support PW.1 regarding the demand for money by the appellant. He has

deposed that the marital life of the appellant and the deceased was smooth and cordial till the second child was born and that thereafter, problems have started after the appellant has fallen in debts following the death of his grandmother. His evidence is also vague and is shorn of any details as to the quantum and the time at which they have allegedly paid money to the appellant. Except this vague and unsubstantiated evidence, no other evidence was placed by the prosecution before the Court to hold that the appellant used to ill-treat the deceased due to her failure to meet his demand for money. However, the fact remained that the deceased left her marital home and started living with her parents much before the alleged offence has taken place.

It is not out of place to observe that it has come out in the evidence of PW.1 that after the death of his grandmother, the appellant was appointed as Village Servant since 2008, which itself shows that financially he could have been in a comfortable position and on the contrary, from the admitted facts of the case, it is evident that the father of the deceased (LW.1) and the deceased herself were living on coolie work, which also highly improbabilises the theory of the prosecution that the appellant was demanding money from his father-in-law (LW.1). Therefore, we are of the opinion that the prosecution failed to prove motive for the appellant to kill his wife.

We shall now discuss the evidence placed by the prosecution in order to find out whether all the links in the chain of circumstances are established for proving the guilt of the appellant.

PWs.1 and 2 spoke about the deceased leaving the house of her father for work at a Tobacco company in the morning of 28.04.2009 and not returning home. PW.1 further stated that on that day at about 4.30 pm, PW.6 informed him that the appellant has told him on phone that he has killed his wife and that since then, they went in search of the deceased and the search proved futile till around 12.00 noon on the next day. Similarly PW.2 gave his evidence in the same vein.

Thus, the evidence of both these witnesses is only hearsay.

The crucial witness whose evidence was mainly relied upon for handing out conviction to the appellant is PW.3. She was a near relative of the deceased who was her husband's brother's daughter. According to her version, she and the deceased went for collie work in the Tobacco godown and the accused came to that place at about 11.00 am or so and took the deceased with him saying that his grandmother died and that when she has returned home alone, she came to know that the appellant telephoned her uncle and informed him that he has killed his wife. In her cross-examination, she has candidly admitted that she has not seen the appellant personally on that day at the Tobacco godown and that when herself, the deceased and others were attending to the work at the godown, watchman of the godown informed her that the husband of the deceased came and wanted to meet the latter and accordingly, the deceased went and met her husband and later informed the witness that her husband was asking her to follow by saying that his grandmother died and that therefore, she was going with him. In her cross-examination, PW.3 has admitted that she is suffering from nervous disability and she cannot walk freely even for some distance. However, she has denied the suggestion that she is confining herself to home and not attending to coolie work for the last seven years due to ill-health. She has, however, stated that the police did not examine her in the case.

A thorough reading of the evidence of this witness does not inspire confidence. As noted above, she has not seen the accused personally and what-all she has stated is a mere hearsay. The prosecution, for the reasons best known to it, did not examine the watchman who allegedly informed PW.3 about the arrival of the appellant and the deceased accompanying him. Thus, a very crucial link in the version of PW.3 has not been supplied by the prosecution. If the version of PW.3 is correct, she was the only person besides the watchman who had the personal knowledge of the deceased

accompanying the accused. If that be so, there is no reason whatsoever for the police not to examine her and record her statement. The police also failed to examine the watchman. Based on the evidence of PW.3, the prosecution cannot press into service the last seen theory as on her own showing, she has not seen the accused on that day much less the deceased accompanying him.

In **Nizam and another v. State of Rajasthan**^[1], the Supreme Court held that undoubtedly “last seen theory” is an important link in the chain of circumstances that would point towards guilt of accused with some certainty and such theory permits Courts to shift burden of proof to accused and he must then offer a reasonable explanation as to the cause of death of the deceased. The Supreme Court, however, entered a caveat that it is not prudent to base the conviction solely on the “last seen theory” and such theory should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind circumstances that precede and follow the point of being so last seen.

PW.6 who is another crucial witness and allegedly received phone call from the accused confiding to him that he has killed the deceased has turned hostile. However, his statement recorded by the police in investigation was marked as Ex.P7. This statement assumes relevance regarding the time of death. He has stated before the police that on 28.04.2009 at 3.00 pm, the appellant has informed him on phone that as the deceased has not brought Rs.50,000/- from her parents, he has taken her from the Tobacco godown to the Eucalyptus garden, at outskirts of Yerrajarla Village, stabbed her with knife, killed and left the dead body there itself and that he has informed the same to the relatives of the deceased, such as, PW.1 and others. PW.1, however, stated that PW.6 has given information at 4.30 pm.

Be that as it may, in Ex.P8, post-mortem report, the doctor opined that the death must have taken place 24/36 hours prior to the post-mortem examination. As could be seen from this document, post

mortem was commenced at 3.15 pm on 30.04.2009. Even if we calculate 36 hours backwards from that time, the death would not have taken place before 3.00 am on 29.04.2009. But it is the consistent evidence of all the witnesses that the death has taken place before 4.30 pm on 28.04.2009.

Thus, the version of the prosecution as spoken to by the witnesses as discussed above is at complete variance with the medical evidence regarding the time of death. As per the statement made by PW.6 before the police, he has informed PW.1 and others about the information received by him from the accused that he has killed the deceased at 3.00 pm on 28.04.2009. Even PW.1 has deposed that at 4.30 pm, he has received the said information from PW.6. It is further evident from the statement of PW.6 that the accused has informed about the place where he has killed the deceased. However, while PW.6 in his statement mentioned that the appellant has informed him that he has killed the deceased at Eucalyptus garden of Yerrajarla Village, PW.1 in his evidence deposed that they have searched for the body at the hillocks of Yerrajarla Village and they could not trace the same. However, the body could be traced by PW.5 at the same place as referred to by PW.6 in his statement. If PW.6 has received the call from the accused not only about the alleged factum of his killing his wife and also about the place of offence, there is absolutely no reason why he along with PWs.1 and 2 could not find the body at the place as allegedly informed by the accused. Further, neither PW.1 nor PW.6 nor any person connected with the deceased has given police report either before the body was traced or thereafter. It would be wholly unnatural for the family members of a person who was found missing to keep quiet without informing the police, more so at least after receiving information from a person who is none other than the accused himself that he has killed his wife. This conduct on the part of the father of the deceased, PWs.1, 2 and 6 would support the opinion given by the doctor that the death

has not taken place prior to 3.00 am on 29.04.2009. The above circumstances would clearly reveal that the deceased was not killed in the manner as sought to be projected by the prosecution.

One other highly suspicious circumstance which needs a mention in this context is the inquest panchanama. As per the prosecution case, the accused was arrested on 04.05.2009 at about 1.00 pm. However the inquest panchanama was prepared at 10.00 am on 30.04.2009. In the inquest report, a graphic description has been made in the manner in which the accused has taken the deceased from the Tobacco godown to the Eucalyptus garden and stabbed her. It is highly incomprehensible as to how the inquest panchadars have gathered the knowledge of the manner in which the offence was committed by the accused which remained within his exclusive knowledge till 04.05.2009, the date of his arrest. This circumstance clearly suggests that the prosecution after recovery of the body has weaved a story at the stage of inquest itself and prosecuted the appellant based on this story.

In the above circumstances, we hold that the prosecution has failed to connect the appellant to the murder of his wife and the Court below has wrongly convicted and sentenced him.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 25.03.2010, in Sessions Case No.199 of 2009, on the file of the learned Sessions Judge, Ongole for the offences punishable under Sections 498-A and 302 IPC., are set aside. Consequently, the accused 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.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

16th March, 2016
VGB

[\[1\]](#) (2016) 1 SCC 550