

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.183 of 2011

19.07.2017

Between:

Basava Sudhakara Reddy

..Appellant

And

The State of Andhra Pradesh,
represented by the Public Prosecutor, Hyderabad

..Respondent

Counsel for the appellant: Mrs.C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:



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

This appeal is filed by the sole accused in Sessions Case No.80 of 2009 on the file of II Additional District and Sessions Judge (Fast Track Court), Srikakulam, assailing judgment, dated 27.12.2010, whereunder he was convicted for the offences punishable under Sections 302 and 404 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for three months for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for three months for the offence under Section 404 I.P.C.

2. The case of the prosecution, in brief, is as follows:

On 19.02.2008 at 5.00 p.m., P.W.16 – the Sarpanch, Pedaganagallapeta Village, presented a report at Srikakulam Rural Police Station that on the said date at about 3.00 p.m., a dead body of a female, aged about 17 years, (hereinafter referred as 'the deceased'), was found at the sea shore in the village limits of Ganagallapeta. Basing on the said report, P.W.19 – the Sub-Inspector of Police, Srikakulam Rural Police Station, registered a case in Crime No.43 of 2008 under Section 174 Cr.P.C. and investigated into it, during the course of which, he visited the scene of offence, drafted an observation report duly attested by P.W.11 and L.W.20 - Kakana Appa Rao, prepared a rough sketch of the scene of offence, held inquest over the dead body of the deceased in the presence of P.Ws.3, 12, 16 and 17 and L.W.22 - Kola Venkatarao under the cover of an inquest

report and subjected the dead body of the deceased for autopsy under the escort of L.W.28 – P.Rama Rao, the Constable. He (P.W.19) examined P.Ws.1 to 3, 16 and 17 and recorded their statements. On 22.02.2008, at 20.00 hours, P.W.4 - the Village Revenue Officer, Balaga, Chapuram Panchayat, produced the appellant and presented a report together with the latter's statement. Basing on the said report, P.W.19 altered the Section of law from Section 174 Cr.P.C., to Sections 302 and 379 I.P.C. and issued express F.I.Rs.

P.W.18 – the Inspector of Police, Srikakulam, took up the further investigation, recorded the confessional statement of the appellant in the presence of P.W.12 and L.W.22 at 9.00 p.m., arrested him at 10.00 p.m., and sent him to judicial remand. P.W.18 verified the investigation conducted by P.W.19, examined PWs.4 to 10 and L.W.9 - Manthri Jotsna, LW.10 - Manthri Sanyasi Rao, L.W.13 - Rehaman Reshma, and L.W.15 - Muddala Naidu Babu and recorded their statements.

P.W.13 – Dr.K.C.C.Naik, Civil Assistant Surgeon, District Hospital, Srikakulam, conducted autopsy over the dead body of the deceased, recorded the external and internal findings, preserved the viscera of the deceased for chemical analysis and reserved his opinion. The material objects were sent for chemical analysis along with letter of advice through L.W.29 – B.Ganapathi Rao, Constable. Based on the report of L.W.26 – N.Adinarayana, Assistant Director, Regional Forensic Science Laboratory, Visakhapatnam, P.W.13 issued final opinion that the cause of death was asphyxia due to drowning.

P.W.14 – Dr.B.Ch.Appalanaidu, Civil Assistant Surgeon, District Hospital, Srikakulam, treated the appellant and opined that there is no evidence that the latter is impotent and issued wound certificate.

P.W.15 – Dr.T.Ranganath, Civil Assistant Surgeon, District Hospital, Srikakulam, also treated the appellant and found an old heated scratch mark over the base of the left thumb of the appellant and opined that the injury is simple in nature and issued wound certificate.

L.W.17 – Smt.P.Srisatyadevi, Special Judicial Magistrate of First Class, Prohibition and Excise Court, Srikakulam, conducted an identification parade with PWs.3 and 7 for identification of the appellant and issued proceedings.

The investigation of L.W.30 – Y.Ramakrishna, Sub-Inspector of Police, Srikakulam I Town Police Station, and PWs.18 and 19 revealed that there was love affair between the deceased and the appellant for about one year prior to the date of occurrence; that there was a marriage proposal of the appellant with L.W.17 - Muppadi Sireesha; that on being informed by the appellant about his love affair with the deceased to L.W.17, the latter advised him that it was not good since the deceased does not belong to their caste; that the appellant informed the deceased about the said advise given by L.W.17, but the deceased expressed her reluctance; that the appellant was determined to eliminate the deceased and that as a part of his plan, the appellant invited the deceased to Srikakulam. That on 19.02.2008 afternoon, the deceased visited Srikakulam and the appellant took her to the sea shore at Pedaganagallapeta Village on his motor cycle bearing No.AP 30F 4154; that both of them spent for one hour in the casurina tope

near the sea shore; that during that time, the appellant raised the issue of his marriage with L.W.17 and asked the deceased to discard him; that the deceased disagreed and insisted the appellant to take her to his house so that she would convince his parents to agree for their marriage and then the appellant, while chitchatting, took her near the sea, bent her down into the sea water and caused suffocation till her death; that after confirming that she died, the appellant brought the dead body of the deceased to the sea shore and laid it there and that he also committed misappropriation of gold chains from the neck of the dead body of the deceased and went away.

3. As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 19, marked Exs.P-1 to P-35 and produced M.Os.1 to 29. On behalf of the appellant, no oral evidence was adduced. However, Exs.D-1 to D-3 contradictions in the statements of P.Ws.1, 5 and 8 respectively were marked. On appreciation of the oral and documentary evidence, the Court below has disposed of the sessions case in the manner as noted hereinbefore.

4. At the hearing, Mrs.C.Vasundhara Reddy, learned counsel for the appellant, has submitted that the Court below, having disbelieved the evidence of P.Ws.3, 7 and 17 – the alleged last seen witnesses, has seriously erred in convicting the appellant based upon the testimony of P.W.1, who was also the alleged last seen witness and the alleged recovery of M.Os.8 and 9 – two gold chains. She has further submitted that if the evidence of P.W.1 is eschewed from consideration as it suffers from various lacunae, the remaining evidence, which has

no probative value to prove the guilt of the appellant, becomes wholly irrelevant and that therefore, the Court below has convicted the appellant based on mere surmises and conjectures.

5. The learned Public Prosecutor (AP), while opposing the above submissions, has sought to support the judgment of the Court below.

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

7. The story of the prosecution goes around P.Ws.1, 3 and 7, who are the last seen witnesses, when the appellant and the deceased were allegedly seen together. We shall, therefore, first consider their evidence.

8. P.W.1, who is a fisherman by profession, deposed that on 19.02.2008 at about 12 noon, after completion of fish hunting, himself along with his colleagues about twenty in number were coming from the sea to reach their houses; that at that time, he observed parking of one two wheeler red in colour and also the presence of one male identified as the appellant along with one lady discussing something and that after observing the same, he did not give any importance to it as such things are routine at the sea shore. He further deposed that after completion of his lunch in the house, he proceeded to a nearby place to repair the net and that at about 4.00 p.m., he heard that one person died and the dead body was lying near the sea shore and when he went near the dead body, he could identify that it was of the same female, who was seen in the company of the male person. In his

cross-examination, he deposed that he was examined by the Police on the same day on 19.02.2008 at about 7.00 p.m. He admitted that he did not state before the Police that he can identify the appellant if he is shown to him. He also admitted that there will be number of visitors at Pedaganagallapeta beach. Most importantly, he admitted that he has not seen the appellant earlier to the day of occurrence and thereafter, till the date of his giving evidence. The Police conducted test identification parade (TIP) for P.Ws.3 and 7, who were also examined as the last seen witnesses. However, for the reasons best known to them, they have not subjected P.W.1, who was as much a stranger to the appellant as P.Ws.3 and 7 were, to TIP. Though P.W.3 was stated to have identified the appellant during the test identification parade, he deposed in his evidence that he has not identified the appellant in full-fledged manner and that he has stated before the Magistrate that the culprit was shown to him by the Police prior to the identification parade. The prosecution has not treated P.W.3 as hostile. Therefore, the Court below has rightly discarded his evidence. P.W.7 is another witness, who was stated to have lent his mobile phone to the deceased when both travelled together from Visakhapatnam to Srikakulam and saw a male person on whose motor bike the deceased proceeded after getting down from the bus at Srikakulam. He deposed that he cannot identify whether the same person, whom he identified in the identification parade as the person with whom the deceased went on motor cycle, is present in the Court hall or not. In his cross-examination by the Public Prosecutor, he denied the suggestion that though he had the capacity to identify the deceased in the photograph confronted before him, he was

intentionally deposing falsehood as if he was not able to identify her in order to help the appellant and that he was deliberately not identifying the appellant in the Court hall though he identified him in the identification parade. The testimony of this witness is also rightly discarded by the Court below.

9. The deposition of P.W.17, another fisherman, who allegedly observed the deceased at the sea shore, was not believed by the Court below. This witness was treated as hostile by the prosecution. Having discarded the evidence of P.Ws.3, 7 and 17, the Court below has placed heavy reliance on the evidence of P.W.1 apart from recovery of two gold chains under Exs.P-8 and 9. As noted hereinbefore, P.W.1, who had no past acquaintance with the appellant, was not made to participate in the identification parade. No explanation was forthcoming from the prosecution in this regard. In our opinion, in the absence of any past acquaintance with the appellant, it is not safe to rely upon the evidence of P.W.1 as he was not subjected to TIP.

10. If we discard the evidence of P.W.1, there will remain two links based on which the Court below has convicted the appellant. The first link relates to the alleged missed call received by L.W.9 - the sister of the deceased and the elder daughter of P.W.5 – the father of the deceased, from the purported mobile phone of the appellant and the second link relates to the recovery of two gold chains (M.Os.8 and 9). As regards the first link, P.W.5 deposed that on 19.02.2008, at about 5.00 p.m., L.W.9 - his elder daughter observed a missed call in her cell phone recorded at 10.00 a.m. and that thereupon, she gave a ring to the said number and heard some male voice stating that the deceased

was friend of his sister and that they might have gone somewhere; that again at about 7.00 p.m. also L.W.9 gave a ring to the same number and they heard the same male voice stating that he is Siddhu and on enquiries about the deceased, he has repeated the same version and also stated that he was leaving for Guntur. P.W.5 further deposed that on the same day at night again, they made a phone call to the same number, upon which, the person has repeated the same version. That on the next day, their verification with the college registers revealed that they received missed call from the number of one Sudhakar Reddy (appellant). In his cross-examination, P.W.5 denied the suggestion that he did not state before the Police about the missed call received by his elder daughter and about their making calls to the said number. This crucial omission was missed by the Court below and it has relied upon the evidence of P.W.5 in this regard as one of the strong circumstances to connect the appellant to the offence. Apart from the fact that the prosecution failed to examine L.W.9 – the elder daughter of P.W.5 to whose phone the appellant allegedly gave missed call and also through which P.W.5 and L.W.9 conversed with the appellant, if P.W.5 noticed missed call and spoken to the appellant later, he would not have omitted to state the said fact before the Police in his statement given under Section 161 Cr.P.C. Failure of P.W.5 to state this fact before the Police shows that this is an improved version with which the prosecution has come out. Another important factor to be considered in this regard is the evidence of P.W.18 - the investigating officer, who deposed that though they secured further information regarding telephone calls from the telecom service providers, they were found not useful for the

purpose of the case. The Court below, however, committed a serious error in relying upon the alleged conversation between the appellant and P.W.5 without giving weight to the fact that the prosecution failed to establish such conversation by producing the call list.

11. The second crucial link is the alleged recovery of M.Os.8 and 9. Exs.P-7 and 8 – the recovery panchanamas are dated 22.02.2008, under which the alleged recovery of one gold chain with Saibaba locket from the appellant and another plain gold chain from the sister of the appellant at the latter's house on 22.02.2008 was made. P.W.5, in his evidence, categorically stated that on the next day of missing of the deceased (20.02.2008) at about 6.00 p.m., he reported the matter to the Police; that on the next day morning (21.02.2018) on seeing the photograph published in 'Eenadu' newspaper, he suspected that something might have been happened to his daughter; that after making a phone call to the Rural Police Station, Srikakulam, he reached the Police Station along with his relatives, including his elder daughter (L.W.9), wife and his brother-in-law and others, where they were shown two gold chains, one hand bag, chudidhar dress and chappals etc., and that they have identified the said articles as belonging to the deceased. This part of the deposition of P.W.5 would, thus, prove that the two gold chains belonging to the deceased were available with the Police at 21.02.2008 itself, which clearly proves that Exs.P-7 and 8 under which two gold chains were allegedly recovered from the appellant and his sister on 22.02.2008 were brought up documents. Thus, in our opinion, the Court below has wrongly placed reliance on both the links. If these links are discarded, the prosecution failed to establish the guilt of the appellant beyond reasonable doubt. In the

analysis as above, we hold that the Court below has wrongly convicted the appellant in the absence of reliable and credible evidence proving his guilt.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant are set aside and the appellant shall be set at liberty if he is not required in any other case(s) or crime(s). The fine amount, if any, paid by the appellant shall be returned to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

19th July, 2017
GHN

