

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

CRIMINAL APPEAL NO.176 OF 2011

DATED:19-07-2017

Between:

Kanukuntal Mallikarjun ... Appellant

And

State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. C Sharan Reddy,
for Smt. C. Vasundhara Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)



THE COURT DELIVERED THE FOLLOWING:

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

The sole accused in Sessions Case No.137 of 2009, on the file of the III Additional Sessions Judge, Warangal, filed this appeal, assailing judgment dt.3.2.2011, whereby he was convicted for the offence under Section 302 of Indian Penal Code (IPC) and sentenced to suffer life imprisonment, and also to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for three months.

2. The case of the prosecution in brief is that one Kasturi Srilatha (hereinafter referred to as, 'the deceased') and her husband - P.W.1 have prior acquaintance with the appellant, that they requested the appellant to advance hand loan of Rs.60,000/- for construction of their house, that the appellant gave the same to the deceased for which she has executed a document, and that the deceased and P.W.1 did not repay the amount despite several requests of the appellant. That on 11.11.2008 at about 18.00 hours, the appellant went to the house of the deceased and P.W.1, situated at Chintal, near Warangal, demanded them to repay the loan amount. That in this regard an altercation took place between the appellant and the deceased, due to which the former grew wild against the latter and P.W.1, and that the appellant picked up an available axe, attacked the deceased with the axe indiscriminately to kill her, as a result of which the deceased fell down in a pool of blood, which was witnessed by P.Ws.1 to 6. That P.W.3 tried to rescue the deceased, and sustained injuries and that the appellant fled away from the place. That P.Ws.1 to 6 shifted the deceased to M.G.M. Hospital, Warangal, for treatment where she succumbed to the injuries on the same day at 21.00 hours while undergoing the treatment.

3. That on 11.11.2008 at 22.00 hours, on receipt of a written complaint from P.W.1, P.W.14 – Inspector of Police, P.S. Mills Colony registered a case in Crime No.262 of 2008 under Section 302 IPC. That during the course of the investigation, P.W.14 examined and recorded the statement of P.W.1, that on the following day, P.W.14 visited the scene of offence, secured the presence P.Ws.9 and 10 – mediators and in their presence he observed the scene of offence, drew the rough sketch of the offence, collected the bloodstained and control earth and got photographed the scene of offence. That later P.W.14 visited the mortuary room of the Hospital, secured the presence of P.W.12 and another as mediators, examined P.Ws.3, 4 and 8, recorded their statements, conducted inquest over the dead body of the deceased, forwarded the dead body to the Department of Forensic Medicine, Kakatiya Medical College, Warangal for post-mortem examination, and got collected bloodstained clothes from the body of the deceased. That later P.W.14 examined P.Ws.2, 5 and 6 and recorded their statements. That P.W.7 – the doctor who conducted autopsy over the dead body of the deceased, issued Ex.P.4 – post-mortem report and opined that the death was 'due to head injury'. P.W.15, who treated P.W.3 opined that she sustained simple injuries. That on 13.11.2008 the Police arrested the appellant and seized the axe which was used in the commission of the offence from his possession and at his instance, under a cover of panchanama before P.Ws.11 and 13 mediators. That subsequently the appellant was remanded to judicial custody and the material objects were sent to the Regional Forensic Science Laboratory, Warangal for analysis. That the Police filed the charge sheet against the appellant for the offences punishable under Sections 302 and 324 IPC.

4. As the plea of the accused is one of denial, he was tried. The prosecution has examined P.Ws.1 to 15, got Exs.P.1 to P.18 marked and produced M.Os.1 to 3. No evidence was let in on behalf of the defence. On appreciation of the oral and documentary evidence, the trial Court has disposed of the case in the manner as referred to above.

5. Mr. C. Sharan Reddy, learned counsel representing Mrs. C. Vasundhara Reddy, learned counsel for the appellant, submitted that though the prosecution has cited P.Ws.1 to 3 as eyewitnesses, P.Ws.2 and 3 have been planted and that P.Ws.4 to 6, who are independent witnesses having turned hostile, the evidence of P.W.1 did not receive corroboration. He has further submitted that the motive as alleged in Ex.P.1 report on one side, and Ex.P.11 – inquest panchanama, Ex.P.13 - first information report and the charge sheet, on the other side, is at variance with each other and that even if the contents in Ex.P.1 are accepted, ignoring the version of the prosecution on motive, as reflected in the inquest panchanama, FIR and the charge sheet, there was absolutely no need for the appellant to go to the house of the deceased and P.W.1. The learned counsel also submitted that serious contradictions in the evidence of P.Ws.1 to 3 render the whole prosecution case incredible, that P.W.11, the mediator to Ex.P.17 - confessional and seizure panchanama, under which M.O.3 – weapon was seized, having turned hostile, and that M.O.3 not having been sent to forensic science laboratory for its opinion, the prosecution failed to connect the appellant to the murder.

6. Opposing the above submissions, Mr. C. Pratap Reddy, learned Public Prosecutor for the State of Telangana, has sought to support the judgment of the lower Court.

7. We have given our earnest consideration to the respective submissions of the learned counsel for the parties and carefully perused the record.

8. In a case based on the evidence of eyewitnesses, motive does not play a significant role. However, as we do not find the evidence of P.Ws.2 and 3 inspiring to hold that they are eyewitnesses, the reasons which would be explained at a later stage, we would like to first consider the aspect of motive as set up by the prosecution.

9. In Ex.P.1 Police report, P.W.1 – husband of the deceased stated that about six years back they have borrowed Rs.30,000/- from the appellant as loan and mortgaged the documents pertaining to their house plot. That though they have repaid the loan along with interest, the appellant was not returning the documents. That on 11.11.2008 at about 6.15 p.m., when the appellant came to the house of P.W.1, the deceased requested the appellant to return the documents. That thereupon the appellant has picked up a nearby available axe and hacked the deceased on her head indiscriminately. That when the deceased fell down in a pool of blood, P.W.1 with the help of P.W.4, has taken his injured wife to Gandhi Hospital, Warangal, in an auto and admitted her therein and that at about 9.00 p.m. he was informed by the doctor that the deceased died. He requested for taking action against the appellant for killing his wife. In substance, the motive alleged in Ex.P.1 is that as the deceased has demanded return of the documents, the appellant has killed her with an axe.

10. We, however, see a converse version in Ex.P.11 – inquest panchanama. In paragraph 15 of Ex.P.11, it was mentioned that for some time prior to the occurrence, the deceased and the appellant used to

quarrel with each other in connection with repayment of loan amount of Rs.60,000/- lent by the appellant to the deceased, that the former used to frequently visit the house of the latter and demand her to repay the said amount, that in that context, on 11.11.2008 at around 6.00 p.m., the appellant came to the house of the deceased and brought pressure on her to repay the loan saying that he will not leave unless she pays the money, and that in that connection there was a serious altercation and when the deceased stated that she cannot repay the loan, the appellant with anger attacked the deceased with an axe indiscriminately with an intention to kill her. The same version has been maintained by the prosecution in Ex.P.13 – FIR and also in the charge sheet.

11. Nowhere during the evidence the material variation between Ex.P.1 and other documents as referred to above, including the charge sheet on the motive for the appellant to kill the deceased was explained. But, interestingly, P.W.1 in his evidence stated that the sum of Rs.30,000/- borrowed by him from the appellant was repaid along with interest of Rs.30,000/- and that the appellant came to his house and hacked his wife with an axe when she was insisting for return of the plot documents. Thus, P.W.1 has reiterated what he has stated in Ex.P.1 ignoring the version reflected in the charge sheet filed after thorough investigation. We thus see material variation in the version of the prosecution regarding the motive for the appellant to attack the deceased. If we take the version in Ex.P.1 into consideration, there was no need for the appellant to go to the house of the deceased as he has already received his loan amount. If at all it would have been for P.W.1 and the deceased to go to the house of the appellant and demand return of the documents relating to their plot. There is thus a strong cloud hovering over the correctness

or otherwise of the truthfulness in the version given by P.W.1 in his report which was the genesis for setting the criminal law into motion. Due to the diametrically opposite versions on the motive for the appellant to attack the deceased, the credibility of the prosecution case at the very inception itself received a severe jolt.

12. We shall now see whether the evidence of P.Ws.1 to 3 is worthy of credence. As regards the manner in which the appellant has allegedly attacked the deceased, P.W.1 was very brief in his narration. All that he has stated is that about one-and-a-half years back, the appellant came to his house and hacked on the back of the deceased with an axe when she was insisting for return of documents and they have taken the deceased in an auto to the place of the ambulance and from there she was taken to MGM Hospital, where, after examining the injured, the doctors declared her dead. He has also stated that himself and his children were at the house when his wife was murdered and that on hearing the cries of his children, the neighbours have arrived at the scene.

13. Both in Ex.P.1 and also in Ex.P.11, P.W.1 did not refer to P.W.3 receiving any injury during the course of occurrence or her admission in hospital for being treated for injuries. In his cross-examination P.W.1 stated that the deceased is his third wife, that his previous two wives divorced and went away because of disputes, that the first divorce took place twenty years back and the second divorce took place one year after the first divorce, and that he has married the deceased about 22 years back and got two children through the deceased. That he used to protest the frequent visits of the appellant to his house in his absence, that he was aged 55 years and the deceased was aged 38 years at the time of her death, that there was a rumour in the locality that the appellant was

having illicit intimacy with the deceased, that he used to object the appellant visiting his house and that on his objection the appellant stopped visiting his house. P.W.1 also admitted that he used to raise quarrels with the deceased by suspecting her character. He further deposed that at the time of the incident he was at the house of one Muslim along with his son and daughter, that at the first instance his daughter arrived at the place of occurrence and after that he reached. He has denied the suggestion that he has not mentioned in Ex.P.1 about the presence of his children at the scene and that except himself, nobody knows how his wife died. He denied the suggestion that he was short tempered and that having killed his wife, to suppress the same he is acting wild before the Court. The Court has recorded that more than once P.W.1 has lost his temper during his cross-examination. If we closely analyse the evidence of P.W.1, it is evident that he has clearly admitted that he along with his children were at the house of one Muslim and that at the first instance his daughter arrived and after that he has reached the scene of offence. Though he has denied the suggestion that he has not mentioned in Ex.P.1 about the presence of his children at the scene, a reading of Ex.P.1 clearly shows that there is no reference to the presence of his children therein. Significantly even in his evidence he did not state anything about P.W.3 receiving injury.

14. Coming to the evidence of P.W.2, son of the deceased, he has stated that when the deceased demanded the appellant to return the documents, the latter has taken out an axe lying at the scene and hit on the back of the head of his mother, who sustained bleeding injury and when his sister - P.W.3 interfered, the appellant kicked her with his leg on her stomach, that he requested the appellant not to harm his family

members and raised cries and that thereafter P.Ws.4, 5 and 6 came and took his mother in an auto to the bridge and from there, by '108 vehicle' to the hospital. While P.W.1 has stated that he has shifted the deceased with the help of P.W.4, P.W.2 has stated that P.Ws.4 to 6 have taken the deceased to the hospital. In his chief examination, P.W.2 has not even claimed that himself, his sister and his father accompanied his mother to the hospital. In the cross-examination, however, P.W.2 stated that he has accompanied his mother to the hospital. Contrary to what P.W.1 deposed, P.W.2 denied the suggestion that his parents used to quarrel with each other. In his cross-examination he has deposed that on the date of the incident he was sitting in the front room of his house along with the deceased, and P.Ws.1 and 3, that his mother first went out of the room, and later all the rest went out of the room on hearing the galata. He also stated that the discussion between the appellant and the deceased took place for about thirty minutes during which time they were all there and that P.W.1 also quarrelled with the appellant. He has denied the suggestion that he has not stated to the Police about the intervention of P.W.3 and the appellant kicking her on her stomach and his requesting the appellant not to harm his family members. He denied the suggestion that he has not seen the alleged incident and he was deposing falsely at the instance of P.W.1.

15. P.W.3, the alleged injured witness and the daughter of the deceased and P.W.1, deposed that when the deceased insisted for return of the plot documents, the appellant beat the deceased with an axe, that the neighbours came there and tried to pacify, but the appellant threatened them and beat on the head of the deceased, that in that process she sustained injury on her right hand and that she was treated in

MGM hospital at Warangal as outpatient. In her cross-examination she has stated that she was in her house when the galata took place and was preparing her records, that her father was also at the house and sitting by her side and P.W.2 was playing with the children of P.W.5 at their house, and that first she (P.W.3) went to the scene and thereafter P.Ws.1 and 2 came there together. She has stated that the loan amount was repaid one year prior to the death of her mother during which time there were no visits to each other's house by her mother and the appellant. She has further stated that thirty minutes after her mother was shifted to the hospital, herself and P.W.2 were taken to the hospital by her maternal uncle Devender (not examined), and that P.W.1 and P.W.4 went along with her mother to the hospital. She has admitted that she has not stated to the Police that she has sustained injury. She has also admitted that she has not stated to the Police that when she tried to rescue the deceased, the appellant beat her, as a result of which, she has received injury on her right hand.

16. A close analysis of the evidence discussed above reveals serious contradictions on many aspects. As noted above, P.W.1 has not referred to P.W.3 receiving any injury. He has even admitted that at the time of the incident he was at the house of one Muslim, obviously referable to P.W.5, along with his son and daughter, and P.W.3 has first arrived at the scene. P.W.2's version is at complete variance with that of P.W.1 regarding their presence at the scene. He has deposed that himself, the deceased, P.W.1 and P.W.3 were sitting in front room and the deceased first went out of the room and on hearing the galata, rest of them went into the other room. Regarding the injury to P.W.3, he has stated that the appellant has kicked her on her stomach. When it comes to P.W.3,

while herself and her father – P.W.1 were sitting in their house, P.W.2 was playing with the children of P.W.5 at their house. We thus find complete inconsistency regarding the presence of P.Ws.1 to 3 at the scene of offence, the manner in which the attack has taken place, the persons who accompanied the deceased to the hospital etc. These inherent contradictions in the evidence of the three crucial witnesses throw a serious doubt on the veracity of their testimony.

17. The fact of P.W.1 not referring to the presence of P.Ws.2 and 3 in Ex.P.1, the earliest version, and P.W.3 receiving the injury raises a serious doubt on the presence of P.Ws.2 and 3 at the scene of offence. While referring to the injury to P.W.3, P.W.2 stated that the injury was caused as the appellant has kicked her on her stomach. P.W.3 came out with a contra version as per which when she tried to interfere, she sustained injuries on her right hand. She did not describe the manner in and the weapon with which the appellant has attacked her. Ex.P.18 medical certificate issued by P.W.15 referred to three injuries, i.e., (i) tenderness in the abrasion over right elbow region; (ii) tenderness over abdomen; and (iii) abrasion over (left) elbow joint. In his evidence, P.W.15 deposed that on 12.11.2008 at 10.00 a.m. P.W.3 was brought by her aunt Manjula and he has found the aforementioned injuries which were simple in nature and she was allegedly beaten by known persons at her residence. The Doctor has not referred to the approximate age of the injuries or the weapon with which they were caused. Considering the highly inconsistent nature of the evidence as discussed above, and the absence of the evidence as to the approximate age of the injuries it is highly doubtful whether P.W.3 has received the injuries during the course of the attack on the deceased. P.Ws.4 to 6, who are the neighbours and allegedly arrived

at the scene on hearing the cries of the deceased, turned hostile and thereby the evidence of P.Ws.1 to 3 has not received any corroboration by independent witnesses.

18. When the evidence of P.Ws.1 to 3 is found highly unreliable, the only other link that could connect the appellant with the killing of the deceased is the alleged recovery of M.O.3 – axe. P.W.11, who is one of the mediators to Ex.P.17 – confessional and seizure panchanama, has turned hostile. He has deposed that he has put his signatures on white papers and nothing was seized in his presence. He has denied the suggestion that on the confession of the appellant and at his instance the Police have seized the axe from the bushes. However, P.W.13, another mediator supported the case of the prosecution. At this juncture, the evidence of P.W.7, the doctor who conducted the autopsy assumes relevance. In his cross-examination he deposed that he cannot say exactly that the injuries are possible only with an axe and that he cannot say what kind of weapon was used. Thus, the Doctor was not sure whether the injuries would have been possible with M.O.3 – axe. The serious lacuna in the prosecution case lies in the fact that M.O.3 weapon was not sent to forensic science laboratory for its opinion as to whether it contained human blood. M.O.3 weapon being an axe is a commonly available weapon. Mere seizure of an axe from a person does not establish nexus between the offence and the person from whose possession the weapon is seized, unless the prosecution establishes that it is with that weapon that the offence is committed. As noted above, the investigation agency has failed to obtain forensic report proving that the seized weapon was used in the commission of the offence. Therefore, the prosecution failed to establish even this link.

19. On a careful marshalling of facts and reassessment of the evidence on record as undertaken above, we are of the opinion that the Court below has committed a serious error in holding the appellant guilty of the offence charged against him. Hence, the criminal appeal is allowed and the conviction and sentence imposed on the appellant vide the impugned judgment of the Court below, are set aside. The appellant shall be set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by him shall be returned to him.

A perusal of the record shows that by order dt.21.11.2016 this Court has granted bail to the appellant as he has served more than five years of sentence, following the order of this Court in *Batchu Ranga Rao v. State of A.P.*¹ Therefore, the appellant shall surrender himself before the Superintendent, Central Jail, Warangal, for completing the necessary formalities as per law.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

19-07-2017

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Note: LR copies to be marked.

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¹ 2016 (3) ALT (Crl.) (DB) (AP)