

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No. 265 OF 2011

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 08.03.2011, passed by the learned III Additional Sessions Judge, Karimnagar (for brevity, 'the trial Court'), in Sessions Case No.494 of 2009, whereby the trial Court acquitted the appellant-accused under Section 235(1) Cr.P.C. of the charge under Section 201 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.'), but convicted him under Section 235(2) Cr.P.C. of the charge under Section 302 I.P.C. and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.500/- (Rupees five hundred only), in default, simple imprisonment for a period of one (1) month of the charge under Section 302 I.P.C.

2. Heard Smt. A. Gayatri Reddy, learned counsel for the appellant, and Smt. C. Vasundhara Reddy, learned Public Prosecutor appearing for the State.

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

(a) The deceased in this case by name Rajitha was the wife of Bodige Narsaiah, who is the *de facto* complainant-P.W.1. One month prior to death of Rajitha, a panchayat was held before the elders regarding illicit intimacy between Rajitha and

the appellant (hereinafter referred to as 'accused'). The elders imposed fine of Rs.80,000/- on the accused and warned him not to continue the illicit relationship with Rajitha, but he did not pay the fine. While so, on 03.11.2008 at about 6-00 a.m., P.W.1 went to base workshop of Open Cast III for labour work. His wife-Rajitha, his son-Aravind aged 5 years and his son-Sunni aged 1 year were in the house. At 9-00 a.m. on that day, one Sampath Yadav of Vitalnagar came to P.W.1 and informed him that his wife-Rajitha was dead. Immediately P.W.1 went to his house and found his wife-Rajitha hanging with a saree in the kitchen room. His son-Aravind informed him, while crying that in the morning, the accused gave Rs.5/- to him and he went to a shop for purchasing biscuits and when he came back to the house, he found the accused killing his mother-Rajitha. When the son of the deceased was weeping by raising hues and cries, neighbours by name Boda Komuramma (P.W.4) and Padala Suguna (L.W.5) rushed there and found Rajitha dead.

(b) Basing on the complaint of P.W.1, a case in Crime No.329 of 2008 was registered by P.W.15-E. Muthaiah, Sub Inspector of Police, Godavarikhani I Town Police Station, for the offence punishable under Section 302 I.P.C., sent express F.I.R. to all concerned and informed about the incident to P.W.16-S. Rajendra Prasad, Inspector of Police, over phone. Thereafter, P.W.16 took-up investigation, rushed to the scene of offence, secured the presence of mediators, examined and recorded their statements, got the scene of offence photographed, drew rough

sketch of the scene of offence and held inquest over the dead body in the presence of the mediators, seized M.O.1-Polyester nylon saree from the scene of offence and referred the dead body to the Government Area Hospital, Godavarikhani for post-mortem examination. P.W.14-Dr. A. Narendra Babu conducted autopsy and submitted his post-mortem report opining that the cause of death was due to asphyxia due to throttling (manual strangulation).

(c) On 13.11.2008 at 4-00 p.m., P.W.12-Korkanti Chander produced the accused before P.W.16-Inspector of Police stating that while he was in his house, the accused went there and made extra judicial confession about killing of Rajitha by throttling her to death and then hanged her to the ceiling pipe of the room with a saree and requested him to save him. Then P.W.16-Inspector of Police recorded confessional statement of the accused, arrested him at 4-30 p.m. on 13.11.2008 and interrogated him in the presence of the witnesses. The accused voluntarily confessed that he had taken away two photographs of the deceased-Rajitha, one photograph was with the younger son as he was told by the deceased that the younger son was born to him (appellant). Then P.W.16 recovered photographs from the accused in the presence of mediators and then produced him before the Court for judicial remand.

4. The case was committed to the Court of Principal District and Sessions Judge, Karimnagar; the Sessions Court, made over the same to the III Additional District and Sessions

Judge, Karimnagar. The trial Court framed charges against the accused for the offences under Sections 302 and 201 I.P.C., for which the accused denied the charges framed against him and claimed to be tried. Before the trial Court, the prosecution to prove the charges framed against the accused, examined P.Ws.1 to 16 and marked Exs.P.1 to P.9 and M.O.1. The accused did not adduce any evidence. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the accused as mentioned above. The accused preferred this Appeal.

5. Smt. A. Gayatri Reddy, learned counsel for the appellant-accused, would submit that the findings of the trial Court are contrary to law and facts of the case; the trial Court erred in placing reliance on the evidence of P.Ws.1 to 9, P.W.12 and P.W.13; P.W.2 is a child witness, he was not administered oath and there are clear indications on record that P.W.2 was tutored by P.W.1, P.W.3 and others; non-examination of L.W.5-Padala Suguna and L.W.6-Boggula Rajeshwari is fatal; the prosecution failed to prove the motive for commission of the offence; and ultimately, prayed to set aside the conviction and sentence recorded against the accused.

6. On the other hand, Sri C. Pratap Reddy, learned Public Prosecutor, would submit that the trial Court satisfied with regard to capability of P.W.2 to give evidence; there is direct evidence of P.W.2 to connect the accused to the alleged offence, who has narrated the offence to P.W.1, P.W.4 and others; there

is no inconsistency in the evidence of any of the prosecution witnesses; when a fine of Rs.80,000/- was imposed in a panchayat, the accused in order to evade payment of fine, had committed the offence; the accused was also of the opinion that the deceased would discontinue her relationship; the prosecution proved the motive for commission of the offence; there is no reason to doubt the prosecution witnesses; the evidence of prosecution witnesses is consistent and cogent; the trial Court has rightly convicted and sentenced the accused for the offence under Section 302 I.P.C.; and ultimately, prayed to sustain the judgment under appeal.

7. In view of the contentions put forth by both sides, the following **points** have come for determination:

- (1) Whether the evidence of P.W.2 is reliable?
- (2) Whether the accused caused the death Rajitha, wife of P.W.1?
- (3) Whether the conviction and sentence recorded against the accused for the offence under Section 302 I.P.C. is sustainable?

8. **POINT Nos.1 to 3:** P.W.1-Bodiga Narsaiah is the husband of the deceased. He is not the eyewitness to the alleged offence. The direct witness to the alleged offence is P.W.2-Bodiga Aravind, son of the deceased, who was 5 years old at the time of commission of the offence. P.W.3-Kokkisa Komala is the mother of the deceased. P.W.4-Boda Komuramma and P.W.7-Mathangi Laxmi are the persons who are residing near to the house of the deceased. The evidence of

P.W.2 reveals that on the date of death of his mother, he was studying U.K.G. in Ushodaya School; on that day at about 9-00 a.m., the accused came to their house when his father was away and his mother was present in the house; the accused gave Rs.5/- to him and asked him to go and purchase biscuit packet, then he went to the shop, purchased biscuit packet and returned to the house; at that time, the accused made his mother stand against a wall, throttled her, took another saree and tied around her mother's neck, then the accused hanged her mother to the roof by climbing the chair; when he started crying, the accused pushed him away and went away; and on hearing his cries, P.W.4-Komuramma, L.W.5-Suguna and L.W.6-Rajeshwari came to their house. In cross-examination, he has given the details of his study, etc., and reiterated what he has stated in the chief-examination. P.W.1 has **deposed** on similar lines that being informed by P.W.2 about the **commission** of offence in this case. He also deposed about the lodging of Ex.P.1-report by him with the police. Ex.P.1-report also corroborates with the evidence of P.W.1 and P.W.2. The date and time of the offence in this case is 03.11.2008 at about 9-00 a.m. Ex.P.1-report was received by the police on the same day at 13-00 hours. There is no contest with regard to the delay in lodging Ex.P.1-report with the police. The details of commission of offence are mentioned in Ex.P.1-report. As per the evidence of P.W.1 and Ex.P.1-report lodged with the police, the motive for commission of the offence is that the accused in order to evade payment of money settled in

panchayat, committed the offence. P.W.3-Kokkisa Komala is the mother of the deceased. She deposed about the illegal intimacy between the accused and the deceased and the accused being penalized to pay an amount of Rs.80,000/- by the panchayat. She also deposed that in order to evade payment of Rs.80,000/-, the accused has caused death of the deceased. The evidence of P.W.3 is also corroborated with the evidence of P.W.2. P.W.3 specifically stated that she was informed by P.W.2 about the commission of offence by the accused in this case.

9. P.W.4-Boda Komuramma is a neighbour of the deceased. She has also clearly and categorically stated that the house of the deceased is situated, on the back side of her house; the accused used to visit the house of the deceased, on the date of incident at about 8-30 a.m., she was cooking food; she heard the cries of P.W.2, then she came out of her house; a window of the house of P.W.1 was opened, she looked into the house of P.W.1 through window and she saw Rajitha hanging to the rafter, then she raised cries; on hearing her cries, L.W.5-Padala Suguna and L.W.6-Boggula Rajeshwari, who are her neighbours gathered there; when P.W.3 and neighbours enquired with P.W.2, P.W.2 informed that the accused came to their house, gave Rs.5/- to him and asked him to go and purchase biscuits and then P.W.2 went to the shop to purchase biscuits and came back to the house; P.W.2 also informed them that he saw the accused making his mother to stand against a wall and throttling her neck, then dragging his mother into the room,

taking a saree and hanging her mother to the roof and then the accused pushing aside P.W.2 and going away.

10. P.W.5-Meragaveni Sampath deposed that he was residing at the colony of the deceased; his house is four houses away from the house of P.W.1; he has financial dealings with the accused; the accused used to visit the house of P.W.1; the deceased-Rajitha is no more; on the date of incident at about 8-45 a.m., when he was at his house, L.W.5-Padala Suguna and P.W.4-Boda Komuramma came to his house and informed him that the younger son of P.W.1 sustained injuries, narrating the same, he brought P.W.1 to his house and he saw the deceased hanging. The evidence of P.W.6-Balasani Narayana reveals that on the date of incident, he noticed the accused going in haste into a lane leading to the house of P.W.1 and the deceased; 30 minutes later, he again saw the accused returning back from the same lane in haste; when he was about to leave the tea shop, he saw many people going towards the same lane, he followed them; when he went into the house of P.W.1, he saw the deceased was hanging; when he made enquiries with P.W.2, P.W.2 informed him that the accused came to his house and gave Rs.5/- to him and asked him to go and purchase biscuits and P.W.2 also informed him after purchase, he returned back and then saw the accused throttling his mother-Rajitha and then the accused took a saree and climbed chair and hanged Rajitha to the rafter. P.W.6 also stated that a representation was given by the deceased stating that she has got illicit intimacy with the

accused and the accused was beating her, then he along with other persons conducted a panchayat and directed the accused to pay Rs.80,000/- to the deceased and also directed the accused not to continue the illegal relationship; the accused agreed to pay the said amount and abide by the directions of the elders, but he did not pay the same. In cross-examination, he reiterated the same. The evidence of P.W.7-Mathangi Laxmi corroborated with the evidence of P.W.6 in all material particulars further with regard to the accused parking the motorbike in the vacant space opposite to her house, going into the house of P.W.1 and returning back from there and then on hearing cries, she went to the house of P.W.1, then P.W.2 narrating the incident. P.W.8-Adepu Mahender is a kirana shop owner. He has deposed that on the date of incident around 8-00 or 8-30 a.m., elder son of P.W.1 (P.W.2) purchased biscuits packet by paying Rs.5/- and after 30 minutes, he came to know that mother of that boy died. P.W.9-Pabbathi Laxmam Reddy deposed about the conduct of panchayat with regard to the alleged illicit intimacy between the accused and the deceased and directing the accused to pay Rs.80,000/- to P.W.1 and evading payment of the same by the accused. P.W.10-Thurpati Shankar deposed about taking of photographs of the dead body marked as Ex.P.2 along with C.D. P.W.11-Shyamala Rama deposed about the conducting of panchanama under Ex.P.4. P.W.12-Korkanti Chander deposed about the conducting panchanama and corroborated the evidence of P.W.7 and

P.W.9. P.W.13-Uragonda Ramesh deposed about the confession of the accused in this case in the presence of L.W.21-Uppugalla Naresh.

11. P.W.14-Dr. A. Narendrababu, Civil Assistant Surgeon in Government Hospital, Godavarikhani, deposed that he conducted autopsy over the dead body of Rajitha on 03.11.2008 between 4-30 and 5-30 p.m. and found the following injuries:

"Ligature like mark of 1/4" seen straight across the neck more prominently seen on the right side and faintly seen on the left side round the neck "

And he did not find any external injuries. He opined that the time of death was 10 to 12 hours prior to the post-mortem examination and the cause of death was due to asphyxia and due to strangulation. Ex.P.7 is the post-mortem examination report. In cross-examination, P.W.14 deposed as hereunder:

"Throttling means if any one holds the neck of a person before the formature of ligature mark, but in this case death was not due to throttling as there was no internal injuries in the neck."

P.W.14 further deposed that he did not observe any bite marks or nail bite marks around the neck of the deceased; As per the doctor's evidence, there was only single ligature mark; there was no fracture of hyoid bone and there were no internal injuries; the tongue was within the lips; he did not observe any traces of stool or urine; except ligature mark, he did not find any external injuries on the body of the deceased.

12. P.W.15-E. Muthaiah, Sub Inspector of Police, deposed about the receipt of Ex.P.1-report on 03.11.2008 at about 13-00 hours and issuing of Ex.P.8-F.I.R. in this case and registering a case under Section 302 I.P.C. against the accused. P.W.16-S. Rajender Prasad is the Inspector of Police, who conducted investigation in this case and filed charge sheet against the accused.

13. The evidence of P.Ws.1 and 2 is consistent and cogent. P.W.1, P.W.3, P.W.4, P.W.6, P.W.7 and P.W.9 corroborated with the evidence of P.W.2 with regard to the accused visiting the house of the deceased on that day and causing the death of the deceased. Ex.P.2-two positive photographs reveal the dead body was hanging from the roof of the house and most part of the legs of the deceased are on ground. There is no reason for the above witnesses to depose against the accused. P.W.8, who is the shop owner, also deposed about P.W.2 purchasing biscuits from his shop at the time of alleged offence by paying Rs.5/- and returning home. Thereafter within half an hour, this witness came to know the death of the mother of P.W.2. P.W.6 and P.W.7 have also specifically stated that the accused going in haste into the lane of the house of the deceased and than within half an hour, returning there from. When they have questioned P.W.2, P.W.2 narrated them how the accused has strangled and caused death of his mother and also hanging the dead body of the deceased from the roof of the house. As per the evidence of

P.W.14-doctor, the death was caused due to asphyxia and strangulation and ligature mark of 1/4" was seen straight across the neck on the right side and faintly seen on the left side round the neck and there is no fracture of hyoid bone. Had the deceased hanged from the roof, there would have been fracture of hyoid bone, her legs could not have been on the floor of the house.

14. The specific evidence of P.W.2 is that after throttling, the accused made the dead body hang from the roof of the house. There is clear and categorically evidence of P.W.2 on record the manner how the deceased is put to death by the accused. As seen from the record, the trial Court after putting some questions, satisfied that P.W.2 is capable of giving evidence. As per the record, P.W.2 has the capacity to understand the questions put to him and give answers to them. There is no evidence of tutoring. There is no reason for P.W.2 to falsely state against the accused. P.W.2 was found crying and when he was questioned about the incident, he has narrated the same to his father-P.W.1 and grand-mother-P.W.3 and neighbours, i.e., P.W.4, P.W.6, P.W.7 and others. There is no reason for P.W.2 to develop such a false story and tell the same to the neighbours. When P.W.2 informed the commission of the offence to the neighbours, P.W.1 was not at all present. Therefore, the question of P.W.2 being tutored does not arise.

15. Learned counsel for the accused has relied on the decisions of the Hon'ble Supreme Court in **Orsu Venkat Rao v.**

State of A.P.¹ and State of M.P. v. Ramesh Kumar and another² and contends that P.W.2 is a child witness and the evidence of a child witness did not inspire confidence and untrustworthy of credence.

16. In **K. Venkateshwarlu v. State of Andhra Pradesh³**, the Hon'ble Supreme Court observed that the evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the Court comes to the conclusion that the child understood the questions put to him and was capable of giving rational answers. It was further observed that a child witness, by reason of tender age, would be a pliable witness and could be tutored easily either by threat, coercion or inducement and therefore, the Court must be satisfied that the attendant circumstances did not show that the child was acting under the influence of someone or was under threat or coercion. The Hon'ble Supreme Court however held that the evidence of a child witness can be relied upon if the Court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has the ring of truth.

17. It was held by a Division Bench of this Court in **Goulla Appaiah and another v. State of A.P.⁴** that the competency of a child witness to give evidence is not considered in relation to his age, but basing on his capacity to understand the questions and to give rational answers. In **State of**

¹ 2005 SCC (Cri.) 166

² (2011) 4 SCC 786

³ (2012) 8 SCC 73

⁴ 2010(1) ALT (CrI.) 15 (DB) (A.P.)

Karnataka v. Shantappa Madivalappa Galapuji and others⁵, the Hon'ble Supreme Court held that the evidence of a child witness is not required to be rejected *per se*, but the Court, as a rule of prudence, considers such evidence with close scrutiny and only on being convinced about the qualify thereof and reliability, can record conviction, based thereon. In **Dattu Ramrao Sakhare v. State of Maharashtra**⁶, it was held by the Hon'ble Supreme Court as follows:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his

⁵ 2009(3) ALT (CrL.) 38 (SC)

⁶ (1997)5 SCC 341

conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

18. As envisaged under Section 118 of the Indian Evidence Act, all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, because of their tender age, extreme old and disease. No such deficiency is found in the evidence of P.W.2. His evidence cannot be discarded on the ground of his tender age. P.W.2 do not suffer from any of the aforementioned infirmities and he has the sufficient indulgence to understand the questions and to answer them. P.W.2 was 8 years old when he was examined by the trial Court. He being a child witness, the trial Court rightly dispensed with the administration of oath. The administration of oath is not compulsory to the witness. There are no omissions and contradictions in the evidence of P.W.2 and also the other witnesses. P.W.2 was not influenced in any other way. His evidence was not shaken. Moreover, he is a natural witness and his testimony can be relied on in toto. The facts and circumstances of the decisions relied on by the learned

counsel for the accused are distinct. So, those decisions have no application to the case on hand.

19. When the incriminating evidence was put to the accused under Section 313 Cr.P.C., he simply denied the same stating 'False' and also denied that he visited the house of the deceased on that morning and he did not admit the relationship between him and the deceased and he also imposition of fine of Rs.80,000/- by the elders against him. As per Section 106 of the Indian Evidence Act, the accused is required to explain the facts within his knowledge. Section 106 of the Evidence Act reads as follows:

"106. Burden of proving fact especially with knowledge
– When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him
illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

20. No proper explanation was given under Section 313 Cr.P.C. examination and no defence witnesses were examined. There are no reasons for prosecution witnesses to falsely implicate the accused. There are no omissions and contradictions in prosecution witnesses. Nothing is on record to discard their testimony. Accused failed to rebut the evidence on record and set up false defence.

21. P.W.14, doctor, in his chief-examination stated that the death was due to asphyxia due to strangulation. In cross-examination he stated that the death was not due to throttling. There is direct evidence of P.W.2 that his mother was throttled to death by the accused. The presence of ligature mark, making the dead body hanging from the roof of the house establishes the deceased was throttled to death, direct evidence prevails over the medical evidence. Therefore, it can be safely concluded that the death of Rajitha is homicidal. P.Ws.4 to 9 are independent witness, there is no reason to doubt their trustworthy. It can be safely concluded that all the prosecution witnesses are truthful witnesses.

22. The prosecution had also proved the motive for commission of the offence, i.e., the accused did not pay the fine amount imposed by panchayat and apprehended that the deceased would not continue the illegal relationship with him. Therefore, all the contentions raised on behalf of the accused do fail. The prosecution proved the ingredients of Section 302 I.P.C. beyond all reasonable doubt. Therefore, the conviction and sentence recorded against the accused for the said offence is liable to be confirmed.

23. In the result, the appeal is dismissed and the conviction and sentence recorded against the accused by the trial Court in Sessions Case No.494 of 2009, *vide* the judgment dated 08.03.2011, is confirmed.

24. A perusal of the record shows that by order dated 14.11.2016 in Crl.A.M.P. No.1773 of 2016, this Court granted bail to the appellant-accused following the order of this Court dated 02.11.2016 in **Batchu Ranga Rao and others v. State of Andhra Pradesh., rep. by its Public Prosecutor**⁷. Therefore, the accused shall surrender himself before the Superintendent, Central Prison, Warangal, forthwith, to serve the remaining sentence. In default, the trial Court shall take appropriate steps against the accused to execute the impugned judgment.

25. As a sequel, miscellaneous petitions, if any pending in this appeal, shall also stand dismissed.



SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: September, 2017
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⁷ (Crl.A.M.P. No.1687 of 2016 in Crl.A. No.607 of 2011)