

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.16 of 2013

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

Assailing the judgment in S.C. No.381 of 2007 on the file of I Additional District & Sessions Judge, West Godavari District at Eluru, wherein the accused Nos.1 to 5 were acquitted for the offence punishable under Sections 376 (2) (g), 302 and 201 IPC, the present appeal came to be filed by the State of A.P.

2) The case of the prosecution, as narrated in the charge sheet, is as under:

The deceased, Thalakonda Mutyalu, is said to have developed illicit intimacy with accused No.1 and used to meet secretly near the graveyard of the Harijans in Pullayagudem Village. On 17.09.2006 at about 5.00 or 5.30 p.m., the deceased left her house and went towards the graveyard of Harijans for the purpose of easing herself. Having noticed the departure of the deceased, accused No.1 went towards the graveyard of Harijans in the cycle of PW.7, who dropped the accused at graveyard of Harijans. Accused No.1 is said to have met the deceased and enjoyed the deceased sexually and thereafter directed the deceased to go to home. After advising the deceased accused No.1 went towards the cattle shed of accused No.2, which is situated near the burial ground. Marlapudi Ganesh (PW.4) who was cutting the grass for his cattle near the burial ground of Harijans witnessed accused No.1 with the deceased in romantic situation. At that time accused No.4 came

there and admonished PW.4 and directed him to go home. On that PW.4 went to his house with the grass bundle. Thereafter, the deceased went on weeping, came out of the burial ground and sat on the southern field bund under a coconut tree of the sugarcane land of Pedamuthi Gangaraju. Accused No.4 came to the cattle shed of accused No.2 and noticed A1 to A3 and A5 supplying liquor to them. A4 also joined with them. They all consumed liquor and when the liquor got exhausted, A5 went into the village and brought some more liquor. Then A4 informed them that the deceased was sitting lonely on the bund of the field of Pedamuthi Gangaraju and weeping.

After completing the consumption of liquor, A2 and A3 reached the deceased where she was sitting. Then A2 and A3 caught hold of her, dragged her into the burial ground where they laid her on the pail of a tomb, and A2 enjoyed her sexually and thereafter A3 pounced upon her, ravished her neck despite her weeping and resistance. Thereafter A3 pressed the throat of the deceased firmly and left her. Due to which the deceased became unconscious. Then A2 and A3 took the assistance of A4, A5 and A1 and lifted the deceased in unconscious state; brought her to a coconut tree situated on the southern side bund of the sugarcane field of pedamuthi Gangaraju and having secured a torn white cloth full hands shirt; used it as a rope, tied one end of the shirt to the neck of the deceased and the other end to the left stem of coconut tree; made the deceased in a sitting posture by clenching her legs on the knee level created a scene of suicide by hanging. Thereafter all the accused left the scene of offence.

It is also the further case of the prosecution that as the deceased did not return back to the house, the mother of the deceased, Tahalkonda Kotamma searched for deceased, but in vain and at about

7.00 p.m. on 17.09.2006, A4 approached her and informed her that the deceased committed suicide by hanging to a coconut tree on the southern bund of the sugarcane field of Pedamuthi Gangaraju and that he united her and laid down her on the ground. On hearing the same, PW1 along with her relatives visited the scene of offence and found the dead body of her daughter Mutyalu. Then the mother of the deceased lodged a report on the intervening night of 17/ 18th September, 2006, at 1.00 a.m. which came to be registered as a case in Crime No.125 of 2006 under Section 174 Cr.P.C. Ex.P1 is the First Information Report. On 18.09.2006 at 7.00 a.m. PW11-the Sub-Inspector of Police held inquest over the dead body of the deceased in the presence of Panchayat Secretary and one Subba Rao. PW.1 and other blood relatives of the deceased were present at the time of Inquest. Ex.P14 is the inquest panchanama. Thereafter, he sent the dead body for postmortem examination.

PW-16, the Civil Assistant Surgeon, Government Area Hospital, Tanuku, conducted autopsy over the dead body and issued Ex.P17—the post mortem report. According to him, the cause of death was asphyxia due to throttling and recent sexual intercourse. The said Post Mortem examination was conducted on 19.09.2006 at 10.30 am to 12.45 p.m. The approximate time of death was about 36 to 48 hours prior to Post Mortem Examination certificate. Thereafter the Section of law was altered from Section 174 Cr.P.C. to Section 302 I.P.C.

On 15.10.2006, at 8.00 a.m., A.1 appeared before Seelaboina Rama Krishna (PW.12) and is said to have voluntarily confessed about the commission of the offence, which came to be reduced into writing wherein the manner in which the incident took place was said to have been narrated along with the statement, the accused was produced

before the Investigating Officer, who recorded the confessional statement and then arrested the accused.

After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.13 of 2007 on the file of Additional Junior Civil Judge-cum-Additional Judicial Magistrate of First Class at Tadepalligudem, who in turn committed the case to the Court of Sessions, wherein it came to be numbered as S.C. No.665 of 2007 on the file of IV Additional District & Sessions Judge (Fast Track) Court at Mahabubnagar.

3) Basing on the material on record, charges for the offences punishable under Sections 376 (2) (g) IPC, 302 and 201 IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 24 and got marked Exs.P1 to P45. Out of 24 witnesses examined by prosecution, PWs.2 to 10, 12, 13, 14 did not support the prosecution case and they were treated hostile by the prosecution. After the closure of the evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

5) As the prosecution failed to prove the circumstances relied upon by it and in the absence of legal evidence to show that the deceased was last seen in the company of the accused, the trial Court acquitted the accused. Challenging the same, the present appeal came to be filed.

6) As seen from the record, the main circumstances relied upon by the prosecution are: i) the extra judicial confession before the Panchayat Secretary and (ii) deceased being last seen in the company of the accused Nos. 1 to 5.

7) The short question that arises for consideration is whether the accused are liable for punishment under Section 302 IPC.

8) In a case based on the circumstantial evidence, the prosecution has to prove the circumstances relied upon to connect the accused with the crime by adducing cogent and reliable evidence.

9) In *Gedela Chandrayya vs State of A.P.*¹ it was held that when the prosecution case rests upon circumstantial evidence, such evidence must satisfy the following four tests:

- 1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
- 2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.
- 3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- 4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

¹ 2010 (3) Alt (Gr) 207 DB (AP)

11) There is no dispute that the case on hand is based on circumstantial evidence and two circumstances relied upon by the prosecution are i) the extra judicial confession made before the Panchayat Secretary and ii) all the five accused were last seen in the company of the deceased. No witnesses were examined to support the case and the only witness who supported the case of the prosecution is the mother of the deceased (PW.1), who admittedly was not an eye witness to the incident. Her evidence is only to the effect that the deceased went to attend the calls of nature at about 4.30 p.m. on that day, but failed to return home till 6.30 p.m. Since the deceased was not found in the house, she was weeping in the street. As it was raining heavily at that time, she was afraid that something must have happened to her daughter. She further deposed that one week prior to that day, A1 threatened deceased Mutyalu and asked her to come along with him to fulfill his lust and the same was informed to her by her daughter. PW.1 found fault with A1 for doing so. After some days, A1 again asked her daughter Mutyalu to come along with him. Then PW.1 brought her brother Avala Venkatesulu from Jagampet to warn A1, for his behaviour towards Mutyalu. Venaktesu and Veeramma came to Pullayagudem and chastised A1 for his misbehaviour towards deceased Mutyalu, and the said Venkatesu took Mutyalu to his village. PW.1 brought Mutyalu back to her house, as she has to attend coolie works. Even after Mutyalu returned from Jagampet, A1 threatened her, a week prior to the date of incident.

12) It is further deposed that while she was weeping on the road, A4 informed him that the dead body of Mutyalu was found in the fields of A2. Immediately she went to the fields of A2 and saw the dead body of her daughter, which was under a coconut tree, surrounded by

sugarcane garden. Since the death of her daughter was under suspicious circumstances, she lodged a report before the police.

13) Her evidence with regard to the earlier incident came to be disbelieved since she did not state in Ex.P1 that about one week prior to the incident, A1 threatened the deceased and asked her to come along with him and the same was informed to PW1 by the deceased and that he found fault with A1 for doing so. The FIR is silent about A1 threatening the deceased and he asking her to come along with him. Even the investigating officer admits that PW.1 did not state in her 161 Cr.P.C. statement, which was recorded on 28.09.2006, that one week prior to that day, A1 threatened Mutyalu and asked her to come along with him to fulfil his lust and that Mutyalu informed the same to her on the same day and that she found fault with A1 for doing so; that after some days A1 again asked mutyalu to come along with him; that she brought her brother Avula Venkatesulu from Jaggannapet to warn A1 for his behaviour towards Mutyalu; that Venkatesu Veeranna came to Pullaigudem and chastised A1 for his misbehaviour towards Mutyalu etc. PW.1 did not state in her 161 Cr.P.C statement that she noticed the clothes of Mutyalu being torn and that there were injuries and scratches on the face, chest and thighs. Even in 164 Cr.P.C statement recorded by the Magistrate, PW.1 did not state these facts namely that one week prior to the date of incident, A1 threatened Mutyalu and asked her to come along with him to fulfill his lust and that Mutyalu informed the same to her on the same day and that she found fault with A1 for doing so; that after some days A1 again asked Mutyalu to come along with him; that she brought her brother Avula Venkatesulu from Jagannapet to warn A1 for his behaviour towards Mutyalu; that Venkatesu, Veeranna came to Pullaigudem and chastised A1 for his misbehaviour towards Mutyalu;

that Venkatesu took Mutyalu to his village and that she brought Mutyalu back to her house since she has to attend coolie works; that even Mutyalu returned from Jaggannapet, A1 threatened Mutyalu and that a week thereafter this incident took place.

14) As seen from the evidence of PW.1, she never referred to the name of A1 in the FIR, 161 Cr.P.C. statement or even in 164 Cr.P.C. statement, except stating that a male person threatened the deceased. In the absence of any evidence, and as the prosecution failed to prove the two circumstances relied upon by them, we feel that the judgment of the trial Court in acquitting the accused for the offences, requires no interference.

15) Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions, if any, pending shall stand closed. The order passed with regard to MOs 1 to 11 shall stand confirmed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

28.12.2017
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