

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CRIMINAL APPEAL Nos.29 and 484 of 2012

COMMON JUDGMENT:(per the Hon'ble Sri Justice A.V.Sesha Sai)

Accused Nos.1 and 2 in S.C.No.464 of 2010 on the file of VI Additional District and Sessions Judge (Fast Track Court) Markapur, are the appellants in these criminal appeals filed under Section 374 (2) of the Code of Criminal Procedure, 1973.

2. These criminal appeals are filed, challenging the judgment dated 21.10.2011 in S.C.No.464 of 2010 rendered by the learned VI Additional District and Sessions Judge (Fast Track Court), Markapur, convicting the appellants/A1 and A2 for the offence punishable under Section 302 read with Section 34 IPC and sentencing them to undergo life imprisonment and to pay fine of Rs.2000/- and Rs.10,000/- each, in default to undergo simple imprisonment for a period of 3 months and 6 months, respectively.

3. The sum and substance of the case of the prosecution is that A1, who is the wife of one Bhupani Srinivasulu, along with A2, with common intention, murdered said Srinivasulu by beating him with deadly weapon to keep up their illicit intimacy as he became hurdle for them.

4. In order to substantiate its case, the prosecution examined P.Ws.1 to 18 and got marked Exs.P1 to P25. On behalf of the accused, no witness was examined and no document was marked. After taking into consideration the material available on record, learned Additional

District and Sessions Judge framed the following points for consideration:

1. Whether the death of deceased is homicide?
 2. Whether A1 and A2 intentionally killed deceased with a common intention and prosecution established the nexus of accused with death of deceased?
 3. Whether the prosecution has made out the case against accused for the offence under Section 302 read with Section 34 IPC beyond reasonable doubt?
5. Heard Sri K. Venkatesh Gupta, learned counsel for appellant/A2 and Smt C. Vasundhara Reddy, learned counsel for appellant/A1 and the learned Public Prosecutor for the State and perused the material available on record.
6. It is submitted by the learned counsel for the appellants/A1 and A2 that the judgment rendered by the Court below is highly erroneous, contrary to law and based on surmises and presumptions; that except the self-serving, interested and hearsay evidence of P.Ws.1 to 3, there is no independent witness to speak about the illicit intimacy of A1 with A2; that the medical evidence also is not in favour of the prosecution and the same is to the effect that the injury can also be caused by falling on the ground; that non-examination of children of A1 and the deceased is fatal to the case of the prosecution; that in view of number of contradictions in the prosecution witnesses, the Court below ought to have acquitted the accused.
7. Per contra, it is maintained by the learned Public Prosecutor appearing for the State that the prosecution proved the case beyond reasonable doubt, as such, the impugned judgment does not warrant any interference by this Court Section 374 of Cr.P.C. He submitted

that the evidence of P.Ws.1 to 3, P.W.16 and Exs.P17, 19 and 21 clearly proved the guilt of the accused.

8. In the above background, now, the issue that arises for consideration of this Court is, whether the judgment rendered by the learned Additional District and Sessions Judge, convicting the accused is tenable and sustainable?

9. In the instant case, there is no eyewitness to the incident and even P.W.3 is a circumstantial witness. In the absence of eyewitness, utmost care needs to be taken for convicting the accused and the motive for commission of the offence needs to be established by the prosecution. As per the prosecution case, there was illicit intimacy between A1 and A2. It is required to be noted that it is a settled principle of law that when two views are possible in the evidence adduced by the prosecution, the view, which is in favour of the accused, needs to be adopted.

10. In order to come to a just and reasonable conclusion in this case, it would be appropriate to consider the oral evidence of P.W.3, who is the sister-in-law of A1, and the evidence of P.W.16-Doctor, who conducted post mortem examination on the dead body, and basing on their evidence, the prosecution registered the case. P.W.3, in her evidence, stated that she has strong suspicion that A1, A2 and one Kalva Srinivasulu killed the deceased by beating him on his head to eliminate him and intending to continue the illicit intimacy by A1 with A2. P.W.3 further deposed that she was not in talking terms with A1. In the beginning of her chief-examination, she stated that A2 is having

illicit intimacy with A1 for the last 10 years and in the subsequent portion of the evidence, she deposed that having known about the intimacy about two months prior to the death of the deceased, she admonished A1. It is also required to be seen that she is admittedly not the eyewitness to the incident. It is not the version of P.W.3 that she had seen A1 and A2 beating the deceased. It is also required to be noted that during the course of cross-examination, P.W.3 also stated that she did not tell P.Ws.1 and 2 on their arrival to hospital about noticing of galata by her in the house of A1 in between the accused and the deceased and Kalva Srinivasulu when she went to fetch drinking water. There is no reasonable explanation forthcoming from the prosecution as to why P.W.3 did not inform P.Ws.1 and 2 with regard to the said incident immediately after the incident. It is also to be noted that the incident occurred on the intervening night of 9/10.04.2007, whereas the statement under Section 161 Cr.P.C., of P.W.3 was recorded on 12.10.2008 i.e., almost one and half year after the incident. Therefore, the version of P.W.3 is highly doubtful and not reliable. Therefore, the very motive attributed could not be established by the prosecution for commission of the offence.

11. Coming to the evidence of P.W.16-Doctor, who conducted autopsy over the dead body of the deceased, he stated that he noted Contusion 4 x 3 cms red in colour over parieto occipital region of scalp, anti mortem in nature. The offence occurred on the intervening night of 09/10.04.2007, whereas, the complaint, on suspicion, was lodged by P.W.1, the brother of the deceased, on 08.05.2007. Therefore, the dead body was exhumed one month after the incident. Thereafter, post

mortem examination was conducted over the dead body. P.W.16 stated that he found head injury on the dead body of the deceased. In Ex.P.17-post mortem report, he stated that the deceased received head injury. In Ex.P19-final opinion, he stated that the deceased died due to head injury. The case of the prosecution is based on the medical evidence that the deceased died due to head injury alleged to have been caused by A1 and A2. There is absolutely no evidence on record to show that A1 and A2 have caused that injury. The case of the prosecution is that it is a case of homicide and A1 and A2 killed the deceased. Except alleging that A1 and A2 killed the deceased, no witness has stated anything about witnessing the incident. There is no direct eyewitness to the incident. The entire case of the prosecution is based on circumstantial evidence. The Court below has considered whether it is permissible or not and it came to conclusion that it is a case of homicide basing on the evidence of P.W.3 and P.W.16.

12. As far as the evidence of P.W.3 is concerned, it is a circumstantial evidence and the same is not reliable. As far as the evidence of P.W.16-Doctor is concerned, he stated that the deceased died due to head injury. But the circumstantial evidence has to establish all the links to connect the accused with the crime. In this case, the circumstantial evidence adduced by the prosecution does not establish the guilt of the accused beyond reasonable doubt. It is to be noted that there is evidence on record to show that the deceased was suffering from ill-health and the same is supported by the evidence of P.W.9-family doctor, who deposed that the deceased used to get chest pain and convulsions on several occasions. He examined and referred

him to a Cardiologist, Dr. Vasanth Kumar. Perhaps, because of his illness, he might have fallen on the ground while going to attend the calls of nature and received injury. The version of the defence that the deceased while going to bathroom, fell down and received head injury is more probable than the version of the prosecution. In the light of the fact that the deceased had already been suffering from ill-health and convulsions, there is every possibility of the deceased falling in the bathroom and receiving such fatal injury on his head. There is no reason to discard the evidence of P.W.9. But the trial Court has ignored this evidence and came to a conclusion that the accused was guilty. When there are two versions present before the Court, i.e., one in favour of the accused and the other in favour of the prosecution, the version in favour of the accused has to be taken into consideration. In this case, the version of the accused is that the deceased fell down in the bathroom and received head injury. The Medical Officer has clearly stated that the said head injury is even possible by a fall on hard surface. Therefore, the version of the accused is more probable than the version of the prosecution.

13. Having regard to the facts and circumstances of the case, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. We are unable to accept the findings of the Court below in convicting the accused for the offence punishable under Section 302 read with Section 34 IPC.

14. In the result, the appellants/A1 and A2 are found not guilty for the offence punishable under Section 302 read with Section 34 IPC and are acquitted for the said offences.

Accordingly, both the appeals are allowed and the conviction and sentence recorded against the appellants/A1 and A2 for the offence punishable under Section 302 read with Section 34 IPC vide judgment, dated 21.10.2011 in S.C.No.464 of 2010 on the file of VI Additional District and Sessions Judge (Fast Track Court), Markapur, are set aside. The appellants/A1 and A2 shall be set at liberty forthwith, if they are not required in any other case or crime.

Since it is represented that A1 is on bail and A2 is in jail, A1 is directed to report before the jail authorities concerned, and on such report, the jail authorities shall release her forthwith. The bail bonds of A1 shall stand cancelled.



JUSTICE A.V.SESHA SAI

JUSTICE GUDISEVA SHYAM PRASAD

16th December, 2017

SJ