

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CRIMINAL APPEAL No.854 of 2011

Between:

Boya Yugandhar, S/ o. Boya Lakshmana Murthy,
Aged: 26 years, Caste: Boya, Occ: Coolie,
Native of Kalyandurg Village and Mandal,
R/ o. Subba Rao Garden, Yatakallu Village,
Settar Mandal

..... APPELLANT

VERSUS

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

..... RESPONDENT

JUDGMENT PRONOUNCED ON : 10.11.2017

HON' BLE SRI JUSTICE :C. PRAVEEN KUMAR
HON' BLE SRI JUSTICE :P. KESHAVA RAO

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/ No
be marked to Law Reporters/ Journals
3. Whether Their Ladyship/ Lordship wish : Yes/ No
to see the fair copy of judgment

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL No.854 of 2011

ORDER :

%Dated 10.11.2017

Boya Yugandhar, S/o. Boya Lakshmana Murthy,
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! Counsel for Appellant : Smt. B. Vasantha Lakshmi

^ Counsel for Respondents: P.P. for the State of A.P.

< GIST :

> HEAD NOTE :

? Cases referred :
AIR 1984 SC 1622

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL No.854 of 2011

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

1) The appellant herein, sole accused in S.C.No.431 of 2008, on the file of the II Additional District and Sessions Judge, Anantapur, who was tried for an offence punishable under Section 302 IPC for causing the death of his wife by name Boya Rajamma (hereinafter referred to as "the deceased") on 18.09.2006, by administering poison forcibly into her mouth. Vide judgment, dated 29.04.2011, in S.C.No.431 of 2008, the II Additional District and Sessions Judge, Anantapur, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of six months.

2) The facts, as culled out, from the evidence adduced, are as under:

i) The accused is the husband of the deceased. PW.1 is the father of the deceased, while PW.2 is the wife of PW.1. PW.3 is the daughter of PWs.1 and 2 and the deceased is her sister. PW.4 is cousin of PW.1. Prior to the marriage of the deceased with the accused, the accused married one Patnamma of Kurlapalli Village

and begot two children. Due to differences between them, the first wife of the accused deserted him and started living with her parents. When she refused to join the accused for leading a marital life, the accused attempted to commit suicide by consuming pesticide. While the accused was taking treatment in a private hospital, he developed acquaintance with the deceased, fell in love and married her without the consent of their parents. They put up their family at Kalyandurg and were doing coolie work. About 5 or 6 months prior to the date of incident, they shifted their family to Yatakallu Village and started working in the mango garden of PW.6. Both of them were living in a shed situated in the mango garden. While things stood thus, the first wife of the accused filed maintenance case before the Judicial Magistrate of First Class, Kalyandurg, to which the accused was attending the Court regularly. On 18.09.2006, when the deceased tried to prevent the accused from going to the Court, to attend the proceedings, there was an altercation, at about 9.00 a.m., and PW.12 is said to have intervened and pacified the matter.

ii) On the date of incident ie. on 18.09.2006 at about 11.15 p.m., the accused telephoned to PW.6, who is the owner of the garden, and informed him that his wife (deceased) consumed poison. As her condition was very serious, he asked him to arrange an auto rickshaw so as to shift the deceased to the hospital. The evidence of PW.5 shows that after receiving instructions from PW.6, he took an auto to the shed, where the deceased and accused were living, lifted her, placed her in auto

and took her to Kalyandurg. The evidence of PW.8 discloses that before reaching the garden, they went to the house of parents of the deceased at Kalyan Durg and informed them about the deceased consuming poison. Thereafter, they went to the garden and saw the deceased lying on the cot. They shifted her into the auto of PW.7, but, however, she died on the way. Thereafter, they reached the house of the parents of the accused at about 4.00 a.m. On the morning of next day, PW.1, his wife and relatives went to the house of the accused and found the deceased lying on the cot. Thereafter, PW.1 went to the police station and gave report to PW.19-the Sub-Inspector of Police. Basing on the said report, PW.19 registered a case in Crime No.36 of 2006, under section 174 Cr.P.C. Ex.P13 is the First Information Report. Since the deceased died within seven years of the marriage, PW.19 sent a requisition to M.R.O., Settur, to conduct inquest over the dead body of the deceased. On 19.09.2006, at about 3.00 a.m., PW.18-the Mandal Revenue Officer conducted inquest over the dead body of the deceased. Ex.P12 is the inquest panchanama. During inquest, he examined PWs.1 to 6. Thereafter, the scene of offence was inspected, in the presence of PW.13 and another, and also prepared a rough sketch of the scene, which was marked as Ex.P14. He, then, returned to the police station, secured the presence of PWs.7 to 10 and recorded their statements. PW.19 sent the body to Community Health Centre, Kalyandurg, for postmortem examination. PW.17-the Civil Assistant Surgeon, Community Health Centre, Kalyandurg,

conducted autopsy over the dead body of the deceased and issued Ex.P9-the postmortem examination report. The opinion was kept pending and the same was given after receiving the F.S.L.report. As per the final opinion, the deceased died due to quinalphos poisoning, which was found in stomach, small intestine, liver and kidney. Final opinion is placed on record as Ex.P10. Since the doctor opined that there were injuries on the body of the deceased and on the instructions of PW.20-the Circle Inspector of Police, PW.19 altered the section of law from 174 Cr.P.C. to 302 IPC and issued fresh F.I.R., which is placed on record as Ex.P15.

iii) PW.20 took up further investigation. He found the investigation done by PW.19 as on correct lines, therefore, he has not recorded the statements of PWs.1 to 10 to avoid repetition but he examined PWs.11, 12 and 14 and recorded their statements. On 16.10.2006 at about 11.00 a.m., while he was in circle office, PW.16 and one Leelakanth came to his office and produced the accused along with Ex.P7-the extra judicial confession statement. According to PW.16, on 16.10.2006 at about 7.00 a.m., when himself and one Leelakanth were present in the panchayat office, the accused came to their office and confessed about administering the poison and killing his wife by throttling her neck about 28 days back. He wants to give statement and he also disclosed that he was away from the village all these days. PW.16 recorded the confession statement of the accused, read over and explained to him, for which he admitted to be true. He obtained the signature of the accused on Ex.P7.

Thereafter, himself and Leelakanth took the accused to Kalyandurg police station and handed over him along with Ex.P7 and covering letter, which is marked as Ex.P8, to the police. The said version of PW.16 was also spoken to by PW.20. To avoid repetition, PW.20 did not record the confession of the accused after he was produced before him. After collecting all the material, he filed charge sheet, which was taken on file as P.R.C.No.71 of 2007, on the file of the Court of the Judicial Magistrate of First Class, Kalyandurg. After complying with the provisions under Sections 207 Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C., and the same came to be numbered as S.C.No.431 of 2008.

3) A charge under Section 302 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P16 and M.Os.1 to 5. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced, in support of his defence.

5) Out of 20 witnesses, examined by the prosecution, PWs.11 to 15, did not support of case of prosecution and were treated as hostile by the prosecution. Taking into consideration the

circumstances relied upon by the prosecution to connect the accused with the crime, the Sessions Judge convicted the accused for the above mentioned charge. Challenging the same, the present appeal came to be filed.

6) The point for consideration is whether the accused was responsible for the death of the deceased or whether it was a case of suicide.

7) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the entire case rests on the circumstantial evidence. According to her, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused in the commission of offence. It is urged that when the evidence of PW.16 was disbelieved by the trial Court, there is no other acceptable evidence to connect the accused with the crime. It is further contended by the learned counsel for the appellant that due to ill health, the deceased committed suicide by consuming poison, which fact is clearly evident from the conduct of the accused. According to her, if really the accused was responsible for the death of the deceased, he would not have informed the same to PW.6 about the incident and also would not have stayed along with his wife. Insofar as the contusion on the neck of the deceased, she submits that those injuries were possible either due to fall on the ground or while she being shifted to the hospital in the auto. It is pleaded that since there is any amount of doubt with regard to the manner in which

the incident happened, benefit of doubt should be extended to the accused.

8) On the other hand, learned Public Prosecutor would contend that even if the extra judicial confession is excluded from consideration, still there remain the other circumstances, more particularly the inconsistent plea taken by the accused. According to him, it is highly improbable to believe that the injuries on the neck of the deceased are caused either by self infliction or due to fall or during the course of travelling in the auto. It is not the case of the accused that these injuries were caused in such a manner. In view of the above, the learned Public Prosecutor submits that the judgment under challenge warrants no interference.

9) Before proceeding with the case, it would be useful to refer to the findings given by the learned Sessions Judge, while convicting the accused.

10) In para No.19 of the judgment, the Sessions Judge held as under:

“It is also doubtful to believe that the alleged surrender of accused before PW.16-the Panchayat Secretary of Yatakallu Village and another witness LW-19-N.Leelakanta Panchayat Secretary, Chinnampalli Village and about giving confession statement by the accused on 16.10.2006. The witnesses PWs.1 to 10 never stated that the accused absconded after the incident and that being the

position, it is highly doubtful to believe that the evidence of PW.16 as the accused surrendered before them and gave confession statement-Ex.P7 and about handing over the accused to the C.I. (PW.20) on 16.10.2006. It is highly improbable to believe that on 16.10.2006 at 7.00 a.m. when PW.16 and another were working in Yatakallu panchayat office, the accused surrendered before them and gave a confession statement. The evidence of PW.16 cannot be believed because PW.19 not deposed about the absconding of the accused.”

11) Further, in para No.23 of the judgment, the Sessions Judge observed as under:

“PW.20-the Inspector of police deposed that he found the investigation done by PW.19 is on correct lines therefore he has not recorded the statements of PWs.1 to 10 to avoid repetition but he examined PWs.11, 12 and 14 and recorded their statements, he searched for the accused and found him absconding, later PW.16 and another produced the accused on 16.10.2006 along with Ex.P7, then he also examined the accused. The accused stated the same version as mentioned in Ex.P7 and therefore he has not recorded separate confession statement, then after completion of investigation he filed charge sheet. It is elicited through this witness that the section of law was altered after 15 days of Ex.P1 after obtaining postmortem certificate and basing on the statements of witnesses and the inquest mahazar, the S.I. altered section of law. It is suggested to him that the accused himself informed about the death of deceased due to ill health and he informed the same to the elders also.”

12) In view of the above, the trial Court found that the extra judicial confession alleged to have been made before PW.16 is not inspiring confidence regarding his surrender and making statement, but, however, the trial Court mainly relied on the stand taken by the accused and his failure to explain the cause for the injuries on the neck of the deceased. The trial Court felt that in the absence of any explanation to the injuries sustained by the deceased and as the accused failed to discharge his burden in explaining the circumstances, which happened in his house, the guilt of the accused stands proved.

13) Referring to the findings arrived at by the Sessions Judge, the learned counsel for the appellant would contend that when once the extra judicial confession goes, the other circumstances do not, in any way, incriminate the accused with the crime.

14) As seen from the record, there are no eye witnesses to the incident. The entire case rests on the circumstantial evidence. It is not in dispute that the accused was present in the house at the time of incident and it is also not in dispute that the death was due to poisoning.

15) Now, the question is whether it was a case of homicide or suicide.

16) In *Sharad Birdhichand Sarda Vs. State of Maharashtra*¹ the Apex Court held as under:

¹ AIR 1984 SC 1622

"In the cases of murder by administration of poison the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction:

(1) there is a clear motive for an accused to administer poison to the deceased, (2) that the deceased died of poison said to have been administered, (3) that the accused had the poison in his possession, (4) that he had an opportunity to administer the poison to the deceased."

17) In the present case, the first circumstance, which has been pressed into service, by the prosecution, viz., the extra judicial confession made by the accused before PW.16 was rejected by the trial Court by disbelieving the evidence of PW.16.

18) The other two circumstances, which are now relied upon by the prosecution, are, 1) the failure on the part of the accused to explain the simple injuries on the neck of the deceased, and (2) failure on the part of the accused to show that the deceased was suffering with ill health, which made her to commit suicide by consuming poison.

19) Insofar as the second circumstance, the learned counsel for the appellant would contend that the evidence on record itself would indicate that the deceased was suffering with ill health, and, as such she committed suicide by consuming poison.

20) Learned Public Prosecutor, on the otherhand, would contend that the plea taken by the accused that the deceased committed suicide due to ill health is not supported by any evidence. Since the plea taken by the accused is not supported by

any material, on record, he would contend that non-explanation of the cause of injuries on the neck of the deceased is sufficient to hold that the accused alone is responsible for the death of the deceased.

21) Insofar as the ill health of the deceased, PWs.1 and 2, who are the parents of the deceased are the best persons to speak about the same.

22) In the cross examination, PW.1 admits as under:

“The distance between the house of accused in Yatakallu and my house in Kalyandurg is about 4 km. On account of such short distance, myself, my wife and others used to visit my daughter now and then. Accused used to bring deceased once in two months to Kalyandurg and got her treated from a doctor. Such visit sometimes will be for one month or 15 days also depending upon the health of the deceased.”

23) Similarly, in the cross-examination of PW.2, who is the mother of the deceased, it has been elicited as under:

“We used to get the deceased treated whenever she was not feeling well. We got her treated like that for about 10 times. We took her to Anantapur also for treatment. Doctors used to say that the deceased would be alright whenever we took her to them.”

24) The evidence of these two witnesses, who are the parents of the deceased, clearly establish that the deceased was suffering with ill health and she used to take treatment in the hospitals either at Kalyandurg or at Anantapur. Both the witnesses admit

that the accused used to bring the deceased once in a month to Kalyandurg, got her treated and such visit sometimes were once in a month or 15 days. The evidence of PW.2 shows that, in recent times, the deceased was being treated for about ten times. Therefore, the finding of the trial Court and also the argument of the learned Public Prosecutor that the deceased was not suffering with any ill health cannot be accepted. There is no evidence on record to show that the poison was available in the house or that the said poison would be used for spraying on the mango trees. PW.6, who is the best person to speak to the said fact, failed to do so. There is no evidence to show that the accused has procured the poison. In the absence of any evidence that the accused was in possession of poison and administered the same, as required to be proved, in case of death due to poisoning, the argument of the learned Public Prosecutor that the accused has administered the poison, which was available in the house, cannot be accepted.

25) The only other circumstance, which is now staring at the accused, is the injuries on the neck of the deceased.

26) Admittedly, these injuries, which are on the neck of the deceased, are not responsible for the death of the deceased. The prosecution is now trying to contend that the accused put pressure on the neck and forcibly administered poison to the deceased. As stated earlier, there is no direct evidence to prove the said fact.

27) The evidence on record, more particularly, the evidence of PW.6 (land owner) would show that on the date of incident, while he was sleeping in the house, the accused telephoned to him and informed him about the consumption of poison by his wife and her condition being serious. He also asked him to arrange an auto rickshaw to shift the deceased to the hospital. Immediately thereafter, PW.6 asked his son-PW.5 to go to the village along with an auto. On instructions of his father, PW.5 took an auto and proceeded to Yatakallu village, where he noticed the deceased lying on the cot. They lifted her, placed her in the auto and shifted her to the house of accused. But, she died on the way to hospital. After placing the dead body at the house of the accused, PW.5 returned to his house.

28) The argument of the learned counsel for the appellant is that if really the accused was responsible for the death of the deceased, his conduct would have been different. It is pleaded that he would not have informed the same to his owner and requested him to arrange an auto. In our view, the same appears to be acceptable for more than one reason. The evidence of the doctor shows that there are about two contusions and three abrasions. When questioned, PW.17-the doctor admitted that the abrasions may be possible by nails but contusions are not possible. He discloses that the contusions may be caused by fall on the ground or fall on a cot or by fall in auto rickshaw, while travelling. From the answers given by the doctor, it is clear that two contusions, which are found around the neck, are not possible by

nails and they are possible by a fall on the ground or on the cot or during the transport from the village in the auto. One does not know as to what happened inside the house. But, one fact, which remains to be noted, is that when PWs.5 and 7 went to the house of the accused, they noticed the deceased lying on the cot and thereafter she was being taken into the auto. None of them, noticed any injuries on the neck of the deceased. The evidence of PWs.5, 7 and 8 is silent in that regard. There is no evidence on record to show as to how the deceased was taken in the auto rickshaw, but, she was taken from Yatakallu Village to Kalyandurg in the auto, covering a distance of about 4 kms.

29) It is also to be noticed that, as per the evidence of PW.9, on the date of incident, at about 4.00 a.m., when he heard the cries of the accused, he went there and came to know that the deceased consumed poison and died. Thereafter, he is said to have gone to the house of the parents of the deceased and informed about the death of the deceased. The said version of PW.9 gets corroboration from PW.10.

30) According to PW.10, on that day, at about 4.00 a.m., he came to know through the villagers that the deceased consumed poison and died and that the body was lying in the house of the accused. He went and saw the body of the deceased.

31) In the cross examination of PW.10, it has been elicited that both the accused and deceased were living happily and there were no differences between them. Both these witnesses were never

treated hostile by the prosecution. Therefore, according to their version, at about 4.00 a.m., on hearing the cries of the accused, they went to the house of the accused where they came to know that the deceased consumed poison and died. Apart from that, the evidence of PWs.5, 7 and 8 does not anywhere indicate presence of injuries on the neck of the deceased.

32) On the other hand, their evidence show that the deceased died due to consumption of poison. Their evidence was brushed aside by the Sessions Judge on the ground that these witnesses might not have seen these injuries as it was dark.

33) It is also to be noted here that three persons went to the scene of offence at the earliest point of time and these three persons shifted the deceased from the cot into the auto and one of them accompanied the deceased and the accused in the auto. When there are three injuries on the neck, the same could not have gone un-noticed. Such being the position, the evidence of the doctor that all these injuries are possible by a fall on the cot or while taking the body in the auto cannot be ignored or thrown out as false and baseless.

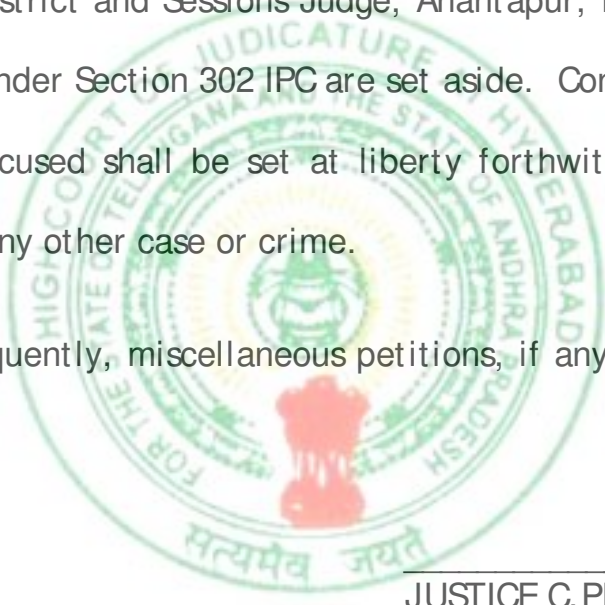
34) Further, the argument of the learned Public Prosecutor that these contusions are possible because of accused putting pressure on the neck of the deceased, when he squeezed the throat, is unacceptable, as such a suggestion never came from the prosecution when the doctor was in box. Since the entire case rests on the injuries found on the neck of the deceased and having regard to

the findings given above, we feel that benefit of doubt can be extended to the accused.

35) In view of the above findings, we feel that the two circumstances relied upon by the prosecution may not be sufficient to connect the accused with the crime.

36) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant in the judgment, dated 29.04.2011 in S.C.No.431 of 2008 on the file of the III Additional District and Sessions Judge, Anantapur, for the offence punishable under Section 302 IPC are set aside. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in any other case or crime.

37) Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

10.11.2017

Note: L.R. Copy to be marked.

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