

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

CRIMINAL APPEAL No.57 of 2011

DATE: 11.07.2017

Between:

Pangi Subba Rao

....Appellant

and

The State of Andhra Pradesh

....Respondent

COUNSEL FOR THE APPELLANT : Sri A. Nagendra Rao

COUNSEL FOR THE RESPONDENT : Public Prosecutor (AP)



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

CRIMINAL APPEAL No.57 of 2011

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

The sole accused in S.C.No.179 of 2010 on the file of VIII Additional District and Sessions Judge, Fast Track Court, Visakhapatnam, filed this appeal against judgment dated 02.12.2010 whereby he was convicted for the offence punishable under Section 302 IPC and sentenced to suffer Rigorous Imprisonment for life besides payment of fine of Rs.500/- in default to undergo simple imprisonment for one month.

The brief case of the prosecution is that P.W.1, Village Talayari, has informed the Station House Officer of G. Madugula Police Station on 10.02.2010 that the appellant has killed his wife, by name, Pangi Ruppi (for short 'the deceased'). Based on the said complaint, Ex.P.12 - First Information Report was registered by P.W.10 at 12.00 hours and FIR was sent to the Judicial First Class Magistrate, Paderu. P.W.12 conducted investigation, during which, he visited the scene of offence in the presence of P.W.8 and L.W.10 – Pangi Raja Rao and drafted Ex.P.11 – scene observation report; seized blood stained red colour saree and blood stained green colour blouse from the deceased, one small knife, control earth and blood stained earth, and kaki colour half hands shirt, biscuit colour half

pant and snuff colour cut banian from the appellant under the cover of Ex.P.16 – Mediators Report; examined P.Ws.1 to 3 and L.Ws.4 & 5 – Kumma Prakasa Rao and Pangi Sukri, and recorded their statements, conducted inquest over the dead body in the presence of P.W.7 and four others as panchayatdars and prepared Ex.P.10 – inquest report; examined and recorded the statements of P.Ws.4 to 6, who are neighbours to the scene of offence, under Section 164 Cr.P.C., took photographs of the scene of offence and the dead body of the deceased and sent the dead body under the police escort of L.W.18 – B. Ramakumar to the Medical Officer, Community Health Centre, Paderu, for post mortem examination. P.W.12 arrested the appellant and seized his wearing apparel in the presence of P.W.9 and L.W.14 – Vanthala Ganapathi and sent Material Objects to the Regional Forensic Science Laboratory, Visakhapatnam, for analysis. P.W.11 conducted autopsy over the dead body of the deceased and issued Ex.P.13 post mortem report opining that the deceased would appear to have died due to 1) cardio respiratory arrest 2) injuries to liver and perforated injury of stomach. L.W.16 – N. Adinarayana, who conducted analysis over the Material Objects, issued Ex.P.17 - report opining that human blood is detected on items 2, 3 and 5 i.e., soil, a red colour polyester saree with white spots and yellow design and a pointed knife with aluminium and iron handle, but their blood group could not be established. He has also opined that blood is not detected on items 1, 4 and 6 to 8. After completion of investigation,

P.W.12 filed charge sheet against the appellant for the offence punishable under Section 302 IPC.

The appellant was examined under Section 228 Cr.P.C. and his plea was one of denial. In view of the same, the Court below has tried the appellant during the course of which, on behalf of the prosecution, P.Ws.1 to 12 were examined and Exs.P.1 to P.17 were marked besides M.Os.1 to 8. On behalf of the defence, no evidence was adduced. On appreciation of the oral and documentary evidence, the trial Court has decided the case in the manner as aforementioned.

At the hearing, Sri A. Nagendra Rao, learned counsel for the appellant, submitted that the Court below has committed a serious error in convicting the appellant, though the material prosecution witnesses, namely, P.Ws.1 to 7 and 9, have turned hostile. He has further submitted that the Court below having held that the motive set up by the prosecution was not proved, based its conviction solely on the testimonies of hostile witnesses i.e., P.Ws.4 to 6. He has also submitted that in the absence of eye-witnesses, the circumstantial evidence brought on record by the prosecution is not sufficient to prove the guilt of the appellant beyond reasonable doubt.

Learned Public Prosecutor opposed the above submissions and argued that the conduct of the appellant is one of the relevant factors which shows that he is guilty. He relied on the circumstances that though the incident has taken place on the night of 09.02.2010, after the incident, the appellant has absconded and was arrested on

12.02.2010. He has further argued that the defence of the appellant was contradictory as on the one hand, he has made suggestions to the prosecution witnesses to the effect that he was not in the Village on 09.02.2010, and on the other hand, in his statement under Section 313 Cr.P.C., the appellant has stated that he came back to the Village from shandy at 6.00 p.m. on 09.02.2010. He has also argued that the evidence of P.Ws.4 to 6 is sufficient to prove the involvement of the appellant in the commission of murder.

We have carefully considered the submissions of both the learned counsel with reference to the material on record.

The case of the prosecution, as reflected from the charge sheet, is that the alleged motive to kill his wife is that the appellant has seen his wife in a compromising position with a stranger at about 3.00 p.m. and that thereafter, he went back to shandy, returned to his house around 6.00 p.m. and stabbed his wife. The trial Court has termed the theory of motive put forth by the prosecution as improbable as the same militates against natural human conduct. We are entirely in agreement with the reasoning of the trial Court to this extent. Had the appellant seen his wife with a stranger in a compromising position, it would have been highly improbable for him to go back to shandy without showing any reaction allowing his wife to remain with the stranger and then, to kill his wife later. Such conduct is not expected of a person of ordinary prudence. In a case based on circumstantial evidence, motive plays a very important

role. With the failure of the prosecution to establish the motive, the case becomes weak. Unless the prosecution has produced strong circumstantial evidence to overcome this weakness, it is not safe to convict the accused.

We shall now consider whether the circumstantial evidence produced by the prosecution is strong enough to ignore the fact that it has failed to establish the motive to convict the accused.

P.W.1 is the first informant. He was declared as hostile. While in his cross-examination by the Public Prosecutor, P.W.1 deposed that the police asked him to present a written report and as he does not know writing of a report, the police themselves got the report drafted through one person in the police station, in the cross-examination by the defence, he has stated that the police did not record his statement or receive any complaint from him when he went to the Police Station to inform about the death of the deceased. He also expressed his ignorance on the contents of the written report as to what the police have written in their record. That the police did not read over the contents of the report and that after lodging Ex.P.1 - report, the police did not enquire anything from him. The law was set into motion based on Ex.P.1 report. There was no clarity as to who has drafted Ex.P.1 besides the fact that P.W.1 expressed ignorance of its contents.

P.Ws.2 and 3, who are the son and daughter-in-law of the deceased, did not support the case of the prosecution. Therefore,

their evidence does not help the prosecution to establish the guilt of the appellant.

The evidence of P.Ws.4 to 6 is somewhat critical. Though they have turned hostile, their testimonies partly supported the case of the prosecution to the extent that they were allegedly informed by the appellant immediately after the alleged occurrence that he killed his wife. In fact, their statements, Exs.P.5 and P.6, were recorded by the police under Section 164 Cr.P.C. These two documents corroborate the version of P.Ws.4 and 5 to the extent of their being informed by the appellant about the killing of his wife. The fact that they have not fully supported the case of the prosecution affects the credibility of their version. Their evidence at best would show that the appellant has confessed to them about the killing of his wife and therefore it can be construed as extra-judicial confession. As per the settled legal position, extra-judicial confession is a weak form of evidence. Unless it is corroborated by the evidence of other credible witnesses, it is not safe to rely upon such evidence. No doubt, as observed by the Court below, there was nothing to suggest that P.Ws.4 to 6 had enmity with the appellant and that therefore, their evidence cannot be disbelieved. In our opinion, even if the defence did not suggest any animosity between P.Ws.4 to 6 and the appellant, unless the prosecution has brought out strong circumstances to support the version of P.Ws.4 to 6, their testimony cannot constitute as the sole

basis for conviction of the appellant. If we closely examine the version of P.Ws.4 to 6, we find it somewhat artificial.

The offence has allegedly taken place around 7.00 p.m. If the appellant has attacked his wife in his house, it must have occurred in the presence of all other inmates, such as, P.Ws.2 and 3 and also the mother of the appellant, reference to whom was made by him in his 313 Cr.P.C. examination. From the evidence of P.Ws.4 to 6, it is evident that they are living within a short distance from the house of the appellant. If the attack has taken place as pleaded by the prosecution, it is highly improbable that the same has gone unnoticed by all these persons. No witness has spoken to their hearing the cries of the deceased at the time of attack. It is not possible to believe that by 7.00 p.m., all the neighbours would have been in such deep sleep as not to hear the yellings that may have been raised by the deceased during the course of attack. All the three witnesses, P.Ws.4 to 6, in one voice stated that the accused has knocked the doors of each of their houses, woke them up and informed that he has killed his wife. From the evidence of P.Ws.4 to 6, it is evident that the appellant has informed them around 10.00 p.m. i.e., after a gap of 3 hours. No explanation was forthcoming as to what the appellant was doing during this long gap.

Though P.W.8, who is a witness to Ex.P.11 – scene observation report, supported the case of the prosecution that M.O.1 – knife was seized from the scene of offence, the fact remains that it

was not seized at the instance of the appellant or in pursuance of his confession. P.W.9, a witness to Ex.P.16 – mediators report, under which, the police allegedly seized the clothes belonging to the appellant, did not support the case of the prosecution. Though P.W.12 – Investigating Officer has spoken to the factum of seizure of the clothes allegedly belonging to the appellant, his evidence remained uncorroborated. Further, absence of blood stains on the clothes allegedly belonging to the appellant as evident from Ex.P.17 FSL report also creates a serious doubt about the case of the prosecution regarding the involvement of the appellant in the commission of offence.

For the aforementioned reasons, we are of the opinion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Hence, the conviction and sentence of the appellant are set aside. The fine amount, if any, paid by the appellant shall be returned to him. The appellant shall be released forthwith from jail, unless he is required in connection with any other case.

The Criminal Appeal is accordingly allowed.

C.V. NAGARJUNA REDDY, J

11th JULY, 2017.

M.S.K. JAISWAL, J

kvni