

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Ms. Justice J.Uma Devi

Criminal Appeal No.12 of 2011

Date: 13.06.2017

Between:

Mancham Veera Raju and another

... Appellants

and

The State of Andhra Pradesh
rep. by its Public Prosecutor
High Court of Andhra Pradesh
Hyderabad

...Respondent

Counsel for the Appellants: Mr.K.Lakshmaiah
for Mr.V.Brahmaiah Chowdary

Counsel for the respondent : Public Prosecutor (TS)

The Court made the following:



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

This Criminal Appeal is filed by the accused in Sessions Case No.87 of 2010 on the file of the II Additional Sessions Judge, Nalgonda, Suryapet, against Judgment, dated 27.12.2010, whereby:- (i) appellant No.1 was found guilty of the offence punishable under Section 302 IPC and was convicted and sentenced to undergo Life Imprisonment and also to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months; and (ii) appellant No.2 was found guilty of the offence punishable under Section 302 r/w 109 IPC and was also awarded a similar sentence to that of appellant No.1.

The case of the prosecution, in brief, is that on 06.06.2009 at about 10.40 a.m., PW.1 presented a report to the Police, Kodad Town Police Station, that at about 5.00 a.m., on that day, PW.7 has informed her that her sister-in-law (husband's sister) viz., Mancham Durga Bhavani (hereinafter referred to as 'the deceased') died of low blood pressure; that when she went to the house of the deceased, she found the deadbody of the deceased kept in front of the house; that she found some ligature marks around the neck of the deceased; that her enquiries with PW.7, who was a tenant of the deceased, revealed that the deceased and

the appellants have quarreled on the previous night till 2.00 a.m. of the following day; and that both the appellants, who are the husband and the son respectively of the deceased, killed the latter by strangulating her with a wire around her neck.

It is the further case of the Prosecution that with the said report, the Investigating Machinery was put into motion; that during the investigation, LW.15- Sub-Inspector of Police, Kodad Town, examined PW.1 and recorded her statement; that PW.15- Circle Inspector of Police, Kodad, has taken over the investigation, during which, he has examined PWs.2 to 8, recorded their statements in detail, got the deadbody and the scene of offence photographed in the presence of PWs.9 and 10, held inquest over the dead body, drew Ex.P.16- rough sketch of the scene of offence, drafted Ex.P.8- scene of offence panchanama in the presence of panchas and seized the broken bangle pieces; that thereafter, the dead body was shifted to the Government Hospital at Kodad, where it was subjected to Post Mortem Examination; that PW.15 examined PW.9 and recorded her statement in detail; and that PW.14 held autopsy over the deadbody of the deceased and issued Ex.P.14- Post Mortem Examination report opining that the cause of death of the deceased was asphyxia due to strangulation.

The further case of the Prosecution is that on 08-06-2009, at 5.00 a.m., PW.15 rushed to the house of appellant No.1 situated at C.C.Reddy Convent Locality, Kodad, and apprehended the appellants; that during interrogation, both the appellants confessed to have committed the offence; that immediately PW.15 secured the presence of PWs.11 and 12, recorded their confessional statements and recovered the wire, which was used in the commission of offence by appellant No.1, from his possession and seized the same after affixing panch chits; that after recording the confessional statements, the appellants were brought to the office of PW.15 at 6.30 hours; and that after issuing an arrest memo to them, they were sent to judicial custody.

It is specifically alleged that appellant No.1 and the deceased were legally wedded couple; that appellant No.2 is their son; that they have a daughter also; that they have performed the marriages of both their children; that both the appellants are car drivers by profession; that appellant No.1 was residing in the first portion of the ground floor; that appellant No.2 was living with his wife-PW.9 in the second portion of the ground floor; that PW.7 was residing in a portion situated in the first floor as a tenant; that the deceased had been protesting and expressing her displeasure over

the conduct of appellant No.1 in having illicit relationship with PW.9- his own daughter-in-law; that the couple were quarrelling with each other for the last two years; that in the night of 06.06.2009, the appellants had heated argument with the deceased during which PW.7 has intervened and tried to pacify them; that thereafter, PW.7 has gone back to his portion and fell asleep; that appellant No.2 spoke with appellant No.1 and abetted him to strangle the deceased; that appellant No.1 decided to eliminate the deceased at any cost; that as per their plan, appellant No.1 has taken a plastic rope available in his residence and strangled the deceased with the same when she was in deep sleep resulting in her death; that at about 4.00 a.m., after committing murder, the appellants anxiously went to the room of PW.7, woke him up and informed him that the deceased died due to low blood pressure; that PW.7 rushed to the ground floor and saw the dead body of the deceased being kept on a cot; that immediately, PW.7 went to the house of PW.1 and informed this fact to her; that thereupon, PWs.1 and 4 to 7 rushed to the house of the deceased and found a scorched injury around her neck; that as per the evidence collected during the investigation, it was established that appellant No.1 has committed the murder of the deceased by strangulating her with a plastic rope; and that appellant No.2 has abetted the offence.

Based on the charge sheet, the learned II Additional Sessions Judge, Nalgonda, has framed the following charges:

“Firstly, That you A-1 on the 06th day of June, 2009 at 04.00 a.m., at Kodad Village and Mandal, Nalgonda District, did commit murder by intentionally causing the death of your wife Mancham Durga Bhavani, by strangulating her with a plastic rope, on the ground that she is suspecting you A-1 that you A-1 is having illegal contacts with your daughter-in-law (wife of you A-2) and confronting clashes; and that you A-1 thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance; Secondly: That you A-2 on the date, time and place as mentioned supra, abetted you A-1 to commit murder of your mother Mancham Durga Bhavani by strangulating with a plastic rope, on the ground that she is suspecting you A-1 that you A-1 is having illegal contacts with the wife of you A-2 and confronting clashes; and that you A-2 thereby committed an offence punishable under Section 302 r/w Section 109 of the Indian Penal Code and within my cognizance.”

The appellants, when questioned of the charges, pleaded not guilty. Therefore, they were subjected to trial, during which the Prosecution examined PWs.1 to 15, got Exs.P.1 to P.18 marked on their side and produced MOs.1 and 2. On behalf of the defendants, no oral evidence was let in. However, they have got the contradictions in the portions of Section 161 Cr.P.C. statements of PWs.2 and 3 marked as Exs.D.1 and D.2.

On appreciation of the oral and documentary evidence, the Apex Court has disposed of the case in the manner as noted herein before.

At the hearing, Mr.K.Lakshmaiah, learned Counsel representing Mr.V.Brahmaiah Chowdary, learned Counsel for the appellants, advanced the following submissions:

- (1) That the Court below has committed an error in convicting the appellants based on the testimony of PWs.1 to 4, who are the close relatives of the deceased, while not giving due weight to the evidence of PWs.4 to 7 and 9;
- (2) That the alleged illicit relationship, which constituted the basis for motive for the appellants to kill the deceased, was not proved by the Prosecution and that despite the same, the lower Court has wrongly convicted the appellants;

The learned Public Prosecutor for the State of Telangana sought to support the decision of the lower Court.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

This is a case based purely on circumstantial evidence. Therefore, in order to convict the appellants, the Prosecution has to establish all the links in the chain of circumstances proving their guilt. In a case of this nature, motive constitutes one of the strong links. PWs.2 and 3, who are the sisters and PW.1, who is

the sister-in-law of the deceased, deposed that the deceased used to frequently inform them about the illicit intimacy between her husband - appellant No.1 and PW.9 and that due to that reason, there were frequent quarrels between the deceased and her husband. No doubt, suggestions were put to these witnesses that no such illicit relationship existed between appellant No.1 and PW.9. The evidence of PWs.1 to 3, even if accepted, is only hearsay, as, according to them, they were informed about the illicit intimacy between appellant No.1 and PW.9 by the deceased. Ex.P.5 is the relevant portion of Section 161 Cr.P.C. statement of PW.7, who turned hostile. He had also stated therein that in the past, the deceased informed him that her husband developed illicit contact with PW.9. He has also stated that at about 10.00 p.m., on 05-06-2009, when he returned from duty, he saw appellant No.1 quarrelling with the deceased; that they always used to quarrel with each other; and that at 2.00 a.m., when he woke up to answer the nature calls, he heard appellant No.1 abusing his wife and making a big noise; and that he came down, pacified the couple and went back to sleep. A thorough examination of this evidence would reveal that while no specific proof of illicit relationship between appellant No.1 and the deceased could be adduced, the fact that appellant No.1 and the deceased were quarrelling with each other

is established by the Prosecution through the evidence of PWs.1 to 3. Though PW.7 has turned hostile, Ex.P.5 was marked to contradict his evidence given before the Court. In the absence of specific evidence, it is not possible to hold that the Prosecution has proved the illicit intimacy between appellant No.1 and PW.9.

Though motive plays strong role in a case based on circumstantial evidence, it cannot be said that failure of the Prosecution to establish motive should by itself lead to acquittal of the accused. The Court will have to necessarily consider as to whether there exist other strong circumstances, which would prove the link between the murder and the appellants. While it is the case of the Prosecution that the death was homicidal, the defence has adopted vacillating stands. It was suggested to PWs.1 to 3 that the deceased died due to ill health as she was suffering from diabetes. However, when it comes to the evidence of PWs.7 and 9, who turned hostile, there is a complete shift in the stand of the defence, which made both these witnesses depose that the deceased committed suicide by hanging. Therefore, we need to scan through the medical evidence carefully.

Ex.P.14 is the Post Mortem Examination Report wherein the following injuries were found on the deadbody of the deceased:

- “1. Ligature mark is present in front and both sides of neck below thyroid cordtillage. On the back of neck, it is not prominent. Skin of the ligature mark is damaged.
2. Face is swollen.
3. Petichikal haemorrhages are seen in both eye lids.
4. Conjusive hamerage, are present under the ligature”

P.W.14- Doctor, who conducted autopsy and issued Ex.P.14- Post Mortem Examination report, opined that the cause of death was asphyxia due to strangulation; that the approximate time of death was 6 to 12 hours prior to the Post Mortem Examination; and that the hyoid bone was in tact. The only question that was put to this witness by the defence was whether there will be a fracture of hyoid bone in a case of suicide by hanging or not. The witness deposed that if a person had committed suicide by hanging, there will be fracture of hyoid bone. It is noticable from the evidence of PW.14 that no direct suggestion was put to him that the deceased might have died due to hanging and not by strangulation. The indirect question put to him in relation to hyoid bone also destroyed the case of the defence that the death might have occurred due to self hanging as hyoid bone was found in tact while in a case of death by hanging,

it would have got fractured. From this evidence, it is clear that the effort of the defence to project the cause of death as suicide has miserably failed.

Once there is no dispute regarding the cause of death, the further question would be as to whether, from the existing circumstances, the guilt of the appellants could be proved beyond reasonable doubt ? The death has taken place during night hours at the residential portion of appellant No.1, which is situated adjacent to the portion of appellant No.2.

Under Section 106 of the Indian Evidence Act, 1872, when a fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Therefore, the burden to prove the cause of death heavily lies upon the appellants to explain as to how the deceased has died when especially it is established that it was a homicidal death. In order to discharge this burden, the appellants have chosen an easy way out by setting up *alibi*. It can be seen from the cross-examination of PWs.1 to 3 that no suggestion was put to any of these witnesses that the appellants were not at home when the death has taken place. However, a belated effort was made through the evidence of PWs.7 and 9,

who turned hostile, to show that the appellants were not at home on the date of the incident.

While PW.7 stated that when he did not find the appellants, he telephoned to their mobiles and that they, allegedly, stated that they are in Kodad Town (the house of the appellants is also situated in Kodad town only), PW.9, who also turned hostile, deposed that her husband- appellant No.2 went on duty (tour) as he was working as a car driver and that after she informed him, both the appellants came to their house, broke open the doors and saw the deceased hanging to the ceiling fan.

In Section 313 Cr.P.C., examination, in reply to question No.44, appellant No.1 has stated that he went on duty to Nalgonda on 05-06-2009 at 4.00 p.m.; that around 4.00 to 4.30 a.m., he received a phone call from PW.7; and that immediately, he rushed to the house at 5.00 or 5.30 a.m., and appellant No.2 stated that he has gone to Hyderabad on 05-06-2009; that he received the phone call on 06-06-2009 from his wife about PW.7 informing her that the deceased committed suicide; and that after 45 minutes, he came home. There is, thus, material variation in the evidence of PWs.7 and 9 on one side and in the respective stands taken by the appellants on the other side.

In the face of inconsistency as to the place to which the appellants have travelled, it is not possible to believe their version that they were away from home.

A Division Bench of this Court in ***Arepalli Chalapathi Rao Vs. State of A.P.***¹ speaking through one of us (CVNR, J) held as under:

“Dealing with alibi, the Supreme Court in ***State of Maharashtra v. Narisingarao Gangaram Pimple*** (AIR 1984 SC 63) held that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the Court would be slow to believe any counter-evidence to the effect that that he was elsewhere when the occurrence happened. But, if the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of reasonable doubt and that for that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy and that it follows, therefore, that strict proof is required for establishing the plea of alibi.

In ***Debar Kundu Rama Krishna Rao v. State of West Bengal*** - (HC) 1 (1988) 654, the Kolkata High Court held that a false plea of alibi is also an incriminating circumstance giving an inference of guilt even in a case based purely on circumstantial evidence.

In the light of the evidence and the legal position, as discussed above, we have no hesitation to hold that the appellant was present at the time of

¹ 2017 (1) ALT (Crl.) 441

the death of his wife and that he failed to explain the circumstances leading to the death of his wife which were especially in his knowledge.”

If the appellants have really gone on duty as car drivers, it would not have been difficult for them to adduce evidence regarding the places to and the specific assignments on which they have gone on duty. No evidence, what-so-ever, in this regard has been produced by them to prove alibi. The appellants, we must say, miserably failed to prove their half-hearted plea of alibi.

There is yet another strong circumstance, which establishes the guilt of the appellants *viz.*, their conduct after they have allegedly returned home in the early hours of 06.06.2009. Being the husband and the son of the deceased respectively, the appellants had every responsibility to inform the Police about the death of the deceased. Even otherwise, it would have been the natural conduct of any person of ordinary prudence to immediately rush to the Police Station and report on the death of the deceased, which was not natural. But, neither of the appellants informed the Police about the unnatural death of the deceased, which clearly shows their guilty mind.

Having regard to the failure of the appellants to explain the ligature marks on the neck of the deceased and the absence of any

probability of an outsider causing the death of the deceased, we have no hesitation to hold that appellant No.1 abetted by appellant No.2 caused the death of the deceased. The Court below has properly appreciated the evidence on record and held appellant No.1 guilty of committing the offence under Section 302 IPC and appellant No.2 guilty for the offence under Section 302 read with 109 IPC and *inter alia* sentenced them to life, which, in our opinion, is appropriate considering the nature of the offence for which they were found guilty. On the premises as above, we do not find any reason to interfere with the judgment of the lower Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(J.Uma Devi, J)

Dt: 13th June, 2017
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