

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

CRIMINAL APPEAL No.42 of 2011

DATE: 03-07-2017

Between:

Kandi Apparao

..... APPELLANT

AND

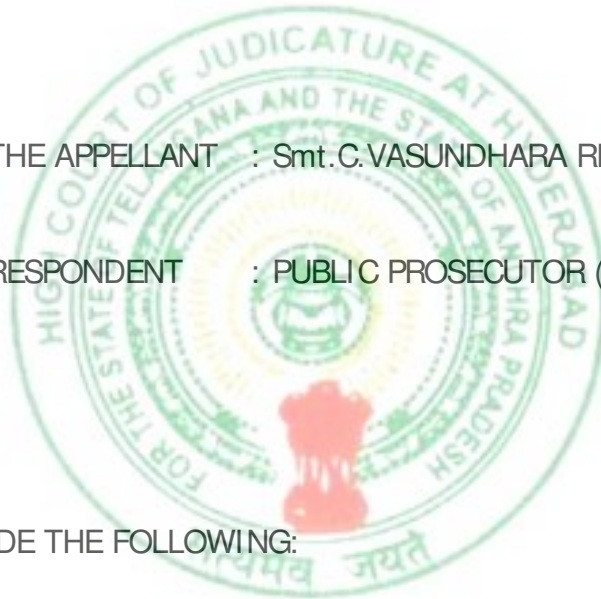
State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Smt.C.VASUNDHARA REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (AP)

THE COURT MADE THE FOLLOWING:



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

CRIMINAL APPEAL No.42 of 2011

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 14.12.2010 in Sessions Case No.181 of 2008 on the file of the I Additional Sessions Judge, Vizianagaram, by and under which, the learned Sessions Judge has convicted the appellant for the offences punishable under sections 302 and 201 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- for the offence under section 302 IPC, and rigorous imprisonment for a period of 3 years and to pay a fine of Rs.3,000/- for the offence under section 201 IPC.

2. The case of the prosecution is as under:

Kandi Lakshmi (hereinafter referred to as 'the deceased') was the sister-in-law of the accused. PW 1 was the brother and PW 2 was the daughter of the deceased. The husband of the deceased, by name, Narayanarao died in a road accident in the year 2006. Since then, the accused was looking after the joint family properties and also looking after court proceedings relating to the insurance claim for the death of the husband of the deceased. He performed the marriage of PW 2, who is the eldest daughter of the deceased. The accused developed illicit intimacy with the deceased. He intended to dispose of the joint family landed property of the family of the deceased situated in Bhimasingi to PW 17 by negotiating with PW 15 behind the back of the deceased. Accordingly the accused executed two sale agreements, dated 02.12.2006 and 30.12.2006 in favour of PW 17. The deceased informed PW 1, her brother, about the activities of the accused in selling the joint family properties. On 08.02.2007 when the

accused asked the deceased to register the document in favour of PW 17, she refused. The accused, through telephone booth of PW 6, made a call to the telephone booth of PW 3 and directed him to send a word to the deceased to come to S.Kota to meet the Advocate in connection with the insurance case.

3. On 09.02.2007 at 9 a.m. PW 7 boarded RTC bus at Bheemasingi and witnessed the accused traveling in that bus to S.Kota. On the same day at 10 or 10.30 a.m PW 5 witnessed the deceased at Pedda Centre of S.Kota and when questioned she stated that she was waiting for the accused. On the same day at about 10.30 a.m PW 8 while returning from Punyagiri, witnessed the accused and the deceased together going towards Punyagiri temple. On the same day at 1 p.m PW 9 witnessed the accused coming from Punyagiri road towards Devi junction.

4. As the deceased did not return back till evening, the next morning i.e., on 10.02.2007, PW 2 informed PW 1 and they searched for the deceased and on 11.02.2007 at 9 p.m PW 1 lodged a report before the police, Jami P.S, about missing of the deceased. The concerned police registered the same as Cr.No.3/2007 under woman missing and issued Ex.P10 First Information Report. PW 18, the Sub-Inspector of Police secured the presence of PWs 2 to 7 and recorded their statements.

5. While so, on 19.02.2007 at 9 a.m., the accused approached PW 10, Ex-VRO of Jami village and made extra judicial confession stating that he killed the deceased by strangulation. The police altered the section of law to Sections 302 and 201 IPC and issued the altered F.I.R. PW 19 took up further investigation and at the instance of the accused, he proceeded to Punyagiri Hills along with mediators and traced the dead body of the deceased, which was found in a decomposed position, and the same was identified by PWs 1 and 2. He conducted scene of offence panchanama and

drafted rough sketch and conducted inquest over the dead body of the deceased in the presence of PW 11 and sent requisition to the doctor to conduct post mortem examination at the scene of offence. On 19.02.2007 at 4.30 p.m PW 16 held autopsy over the dead body and opined that the cause of death was strangulation with the saree twisted around the neck. After completion of investigation, PW 19 filed the charge sheet.

6. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 19 and marked Exs.P1 to P12 and M.Os.1 to 10. On behalf of the accused, Exs.D1 & D2 were marked. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

7. The plea of the accused is one of denial.

8. The learned Counsel appearing for the appellant/accused submitted that the circumstances relied upon by the prosecution are incomplete and they do not establish beyond shadow of doubt that it is the accused who has perpetrated the crime, that the chain of events relied upon by the prosecution are incomplete and that there are several circumstances which go to show that the accused has been falsely implicated. Learned Counsel further submitted that the evidence with regard to the material aspects is discrepant and it is difficult to believe that the accused would have voluntarily confessed having committed the crime. According to the learned Counsel, the gap in between the last seen and recovery of the skeletal remains of the deceased is substantial and therefore it cannot be said that it is the accused who has committed the crime. He has further submitted that the evidence on record does not establish beyond reasonable doubt that it is the accused who has committed the crime and therefore he is entitled to the benefit thereof. Alternatively, the learned Counsel submitted that the acts of the accused do not attract the offence punishable under Section 302 IPC., as the

evidence on record shows that the accused had neither knowledge nor the intention to kill the deceased.

9. Learned Public Prosecutor, on the other hand, submits that the prosecution has produced cogent evidence connecting every link in the chain of circumstances which lead to no hypothesis other than that it is the accused who committed the heinous crime of causing the death of the deceased on 09.02.2007. He has further submitted that the prosecution has also established that the deceased had planned and executed the barbaric crime in view of the motive which he nurtured in relation to the properties of the family of the deceased and therefore the trial Court taking into consideration the evidence on record held the appellant guilty of the offence punishable under Section 302 IPC., which does not warrant any interference.

10. The point for consideration is whether the prosecution proved its case against the appellant beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether it needs to be set aside, modified or varied?

11. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

12. The case is based on circumstantial evidence. The prosecution relied upon the following circumstances:

That the accused has strong motive to kill the deceased; that the deceased and accused were last seen together on the date of death of the deceased; that the prosecution witnesses have seen the accused and deceased going towards Punyagiri Hills and after sometime, the accused alone was seen coming back; that the whereabouts of the deceased were not known for more than a week and efforts were made to trace her; that the accused realizing that the noose is surrounding his neck has voluntarily went to a retired Village Official with whom he was having friendship and prior

acquaintance and confessed having committed the crime and gave the details as to how it was committed; that the confession so made by the accused led to the discovery of the fact that the deceased was killed and led to the recovery of *corpus delicti* which was in a highly decomposed state lying in a remote area to which none had access; that the body was identified by the kith and kin of the deceased on the basis of the wearing apparels, and that the postmortem examination revealed that the deceased was strangled to death with the help of her own saree.

13. There is no controversy insofar as the relationship between the accused and the deceased is concerned. The deceased Kandi Laxmi is the wife of Narayana Rao who was the younger brother of the accused. The husband of the deceased died in an accident in the year 2006 and therefore it is the accused who was looking after the legal, financial and other affairs of the family of deceased who was by then having a grownup daughter (PW.2). In that process, it is alleged that the accused developed illicit intimacy with the deceased. It is also on record that it is the accused who spent money for the marriage of PW.2. The motive for commission of the crime is said to be the refusal of the deceased to execute sale deeds in respect of some property over which the deceased had right and the accused has entered into an agreement with third parties for sale of the said property. The accused was insisting the deceased to complete the sale but the deceased was refusing on the ground that no part of consideration is paid to her. By selling the lands, the accused wanted to make good the expenses which he met for the marriage of PW.2, the daughter of the deceased.

14. In order to prove the motive, the brother of the deceased is examined as PW.1 and he spoke about the facts stated above. It is in the evidence of PW.1 that his deceased-sister informed him about 10 to 15 days prior to her disappearance that the accused was demanding her to execute the registered

sale deed in favour of one Pilla Suryanarayana, for which the sale consideration was received by the accused but nothing was paid to the deceased. It is also in his evidence that he advised his deceased-sister to place the matter before the elders to settle the dispute.

15. PW.2, the daughter of the deceased, also spoke about the above aspects. Both these witnesses were elaborately cross-examined but nothing concrete is elicited from them for disbelieving their evidence insofar as the existence of motive for the accused to kill the deceased is concerned. As is well settled, in a case based on circumstantial evidence, motive plays a predominant role and in the instant case, by cogent evidence, the prosecution established this material link.

16. According to the prosecution, the accused contacted the deceased over telephone and requested her to come over to S.Kota on 09.02.2007 so as to meet the Advocate in connection with the case claiming compensation for the death of the husband of the deceased, which was pending. PW 2 deposed that on 09.02.2007 at 7.30 a.m the accused made a phone call to the nearby shop to speak to the deceased, that the deceased went there and after returning, she informed LW 2 that the accused asked her to come to S.Kota to meet the Advocate in connection with the insurance case and that LW 2 sent the deceased by giving her Rs.25/-. It is in the evidence of PW.6 that a few days prior to the police recording his statement, the accused came to his STD Booth and made a phone call by informing him that he wanted to call a number at Bheemasingi village, where admittedly the deceased was living.

17. PW.3 is another telephone booth operator who is having his kiosk at Bheemasingi villager. He deposed that about three years prior to his giving evidence in the year 2010, the accused called on his phone and expressed his desire to speak to the deceased and accordingly PW.3 sent for the deceased

who came there and spoke to the accused. He further deposed that he has not seen the deceased thereafter.

18. The evidence of PWs.3 and 6 coupled with that of PW.2, the daughter, clearly shows that the accused spoke to the deceased over the phone and asked her to come over to S.Kota to meet the Advocate who was handling the case for compensation.

19. PW.4 is a woman who was also doing coolie work along with the deceased. She deposed that on a day, about three years prior to her evidence, at about 07.30 a.m., she saw the deceased coming from the STD booth of PW.3 and she enquired the deceased as to whether she is coming to the coolie work. It is further in the evidence of PW.4 that the deceased in turn informed that she will not be attending the work that day since she has to go to S.Kota on Court work and that it is the accused who called her to come over to S.Kota. It is further in the evidence of PW.4 that next day morning she came to know that the deceased did not return home.

20. The other material witness is PW.5 who deposed that about three years prior to her giving the evidence, on one day he saw the deceased at Pedda Centre of S.Kota, that at that time PW.5 went there on his own Court work, that when he asked the purpose of the deceased visiting that place, the deceased informed him that she came in respect of the insurance claim case, that when PW.5 asked her to come to the Court along with him, the deceased informed him that she was waiting at that spot for the arrival of the accused who asked her to wait there.

21. PW.7 is a girl, aged about 17 years, and she deposed that on 09.02.2007 she boarded the bus at Bheemasinghi to go to Jami High School, that the said bus was proceeding towards S.Kota from Vizianagaram, that she saw the accused in the bus and she spoke to him, that when she asked the

accused as to where he is going, the accused informed her that he is going to S.Kota.

22. The evidence of PWs.2 to 7 clearly establishes the fact that on 09.02.2007, the deceased went to S.Kota on being called by the accused and thereafter the deceased was not seen alive by anybody. All these witnesses were searchingly cross-examined but nothing is elicited from them for disbelieving their statements. Their testimony has a ring of truthfulness, sound and probable without any exaggerations. PW 3 to PW 7 are the witnesses who have neither any interest in the deceased nor any animosity against the accused.

23. Insofar as the crucial link of the deceased and the accused having been last seen together, there is evidence of PW.8. He deposed that about 3½ years ago, one day at about 10.30 a.m, when he was returning from Punyagiri, he noticed the accused and the deceased together going towards Punyagiri temple and that when he asked the deceased as to where they were going, the deceased told him that they were going to Punyagiri hills. It is also in the evidence of PW.8 that since the deceased was in S.Kota, he asked her to come to his house on way back but she did not come, that subsequently, PW.8 came to know that PW.1, the brother of the deceased, gave a complaint about the disappearance of his deceased-sister and that PW.8 informed PW.1 that he has seen the accused and the deceased going towards Punyagiri hills about a week prior thereto. The evidence of PW.8 is convincing and consistent which establishes the fact that he has seen the accused and the deceased going towards Punyagiri hills on the date when the deceased disappeared.

24. PW.9 is another witness who spoke about his seeing the accused returning from Punyagiri hills and proceeding towards Devi junction at about 1 p.m. It is in the evidence of PW.9, who was plying the auto, that he

enquired the accused as to whether he intends to come to Bheemasingi village but that the accused refused and went away towards bus station.

25. From the testimony of PWs.8 and 9, the fact that is clinchingly established is that on 09.02.2007 the accused and the deceased together were seen proceeding towards Punyagiri hills and two or three hours thereafter, the accused alone returned therefrom. From that day and time, the deceased was not seen alive by anybody. Therefore, it is established that the accused was in the company of the deceased for the last time when she was alive and that both of them proceeded towards Punyagiri hills from where about nine days thereafter the decomposed body of the deceased was recovered.

26. According to the prosecution, for more than a week, efforts were made to trace the deceased which were futile. However, on 19.02.2007, according to the prosecution, the accused made a confession in the presence of PW.10, who is a retired Village Revenue Officer of Jami village. The evidence of PW.10 is placed on record to establish the extrajudicial confession said to have been made by the accused which not only led to the discovery of fact that the deceased was killed but also that recovery of her highly decomposed dead body was left at a place where none could notice the same.

27. Extrajudicial confession needs to be carefully appreciated since it is one of the weak links in the chain of circumstances in a case based on circumstantial evidence. However, if the extrajudicial confession is supported by other circumstantial evidence, the Court can certainly rely upon the same provided the testimony of the person before whom such confession is made inspires the confidence of the Court.

28. Psychologically, a person tends to spill the beans before a person with whom he has prior acquaintance, and has enough confidence in him

and is hopeful of getting adequate protection, which he intends to secure. In the instant case, the accused is said to have made the confession before PW.10, who is a retired Village Revenue Officer and who had prior acquaintance with the accused since both the accused and PW.10 were having lands in the same village and the accused used to approach him as and when required. PW.10 deposed that about three and half years, prior to his deposition, one day at about 09.00 a.m., when himself and one Appala Naidu (LW.16) were at the M.R.O. Office at Jami, in connection with a meeting, the accused came there and confessed that it is he who killed his sister-in-law about ten days prior thereto and that his family members came to know about it, due to which the police are searching him. He further deposed that thereafter himself and Appala Naidu took him to a room and enquired as to what happened and accordingly the confessional statement of the accused was recorded. He prepared a report addressed to the S.I. of Police and handed over the report, the confessional statement and the accused to the police. The accused is said to have informed PW.10 that since the deceased was refusing to register the property as demanded by him, he called her to S.Kota on the pretext of meeting the Advocate and instead took her to a secluded place in Punyagiri Hills, that after they visited the temple, he again asked his sister-in-law (the deceased) about the land and when she refused, he strangulated her with a saree and threw the dead body in the nearby bushes.

29. We have carefully perused the extrajudicial confession recorded by PW.10 and also the evidence. We see no reason to suspect the credibility of PW.10 and his assertion that it is the accused who came to him and voluntarily made the confession.

30. Learned Counsel appearing for the appellant/accused submitted that in the confessional statement-Ex.P.2, the signature of its maker namely the appellant, is not appended on each page underneath the statement but instead his signature is found on the left hand margin of each page. This fact is no doubt borne out from the record but in our opinion, that by itself cannot be taken as a ground for discarding the testimony of PW.10 and the confessional statement-Ex.P.2. In the process of writing a detailed and elaborate confession, when there is no adequate space on the page at the end of the last line, the signature of the person required to sign can be obtained on the left hand side margin. At the end of the Ex.P2 statement, the same is signed by the appellant, PW.10 and Appala Naidu (LW.16).

31. The next vital link is the recovery of the incriminating objects, more particularly, the *corpus delicti* of the deceased from a place on the same having been pointed out by the accused. Reliance is placed on the evidence of PWs.11 to 14 and 19 on this aspect. It is in the evidence of PW.11, who is the Panchayat Secretary of Bheemasingi village, that on 19.02.2007, at about 11.00 a.m., himself and one Ramakrishna (LW.17), who was the Village Revenue Officer of the said village, were called to the Police Station and they went there where they noticed the accused in the custody of the police. The Investigating Officer – PW.19 interrogated the accused in their presence and the accused confessed having committed the crime and further stated that if they follow him, he will show the place where he killed the deceased and concealed the dead body. The statement is recorded which was attested by both the panch witnesses. It is further in their evidence that accordingly the accused took them to Punyagiri Hills and pointed out the place behind the bushes where he concealed the dead body of the deceased, and that on removing the

bushes, they found the dead body of a female. It is further in the evidence of PW.11 that they have also noticed that the saree of the deceased was tied tightly to the neck of the body and they also found articles such as bangles, money purse and other items which are marked as M.Os.4 to 10. PW.11 further deposed that the Inspector of Police seized the articles under panchanama, got the scene of offence photographed and prepared observation report, which was attested by the panch witnesses.

32. On the spot, inquest was conducted and PW.12 who was the Village Revenue Officer of S.Kota along with another acted as panch witnesses. Ex.P.6 is the inquest report. The evidence of PW 12 is similar to that of PW.11 who was also present at the spot. PW.13 is the person who deposed that himself and LW 22 were called to the spot by the police for removing the bushes on the Punyagiri Hills and that accordingly he removed the bushes at the instance of the Inspector of Police and found the dead body of a female in a highly decomposed state.

33. The evidence of the above panch witnesses is corroborated by the Investigating Officer-PW.19. The evidence of these witnesses, who are all independent and have nothing against the accused, clearly show that it is the accused who made the confession and led to the recovery of the incriminating material objects along with the dead body which was identified as that of the deceased Laxmi.

34. The place from where the dead body was recovered is a secluded one and it was not visible to the general public passing from nearby unless specific attention is invited. The fact that the dead body was lying there was not noticed by anybody for nearly ten days. It is only the accused who has pointed out the spot and from behind the bushes, the hidden dead body was recovered. A perusal of the sketch-Ex.P.12

prepared at the scene of offence shows that the place is so secluded and inaccessible that except the accused who hid the body there, none else can notice the same. It is noticed from the sketch-Ex.P.12 that for going to the hilltop temple, there are steps on one side and road on the other. In between the steps and the road, there is a wide gap and the area is surrounded by trees and bushes. There is a pathway connecting the steps and the road. In between the steps and the road, at the place where there are trees and bushes, the body was found. Therefore, none other than the person who concealed something there will be knowing about it. Since the appellant/accused is the author of the crime, he has led the police and panches to the spot, and he pointed out the said place from where the dead body was retrieved.

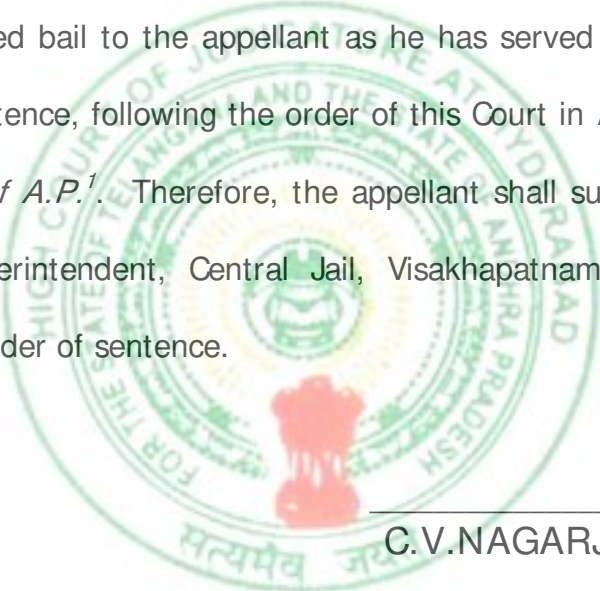
35. In appreciating a case based upon circumstantial evidence, the Court is required to evaluate the same carefully to ensure that the chain of events is clearly and completely established so as to rule out any reasonable likelihood of convicting an innocent. There is no gain saying the fact that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and there cannot be any universal yardstick. The cumulative effect of the entire evidence on record should be collectively considered for determining the culpability or otherwise of the accused and when done so, it should lead to the irresistible conclusion that it is the accused who is the perpetrator of the crime alleged. The circumstances so established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused.

36. The evidence on record clinchingly establishes that it is the appellant/accused who committed the crime which fact was unearthed pursuant to his own confession, leading to the recovery of incriminating evidence.

37. The trial Court has meticulously appreciated the entire material on record in proper perspective and we see no reason to hold that the evidence on record gives rise to a suspicion about the involvement of the accused in the crime and that he deserves the consequential benefit. There are no merits in the appeal and the same is liable to be dismissed.

38. In the result, the Criminal Appeal is dismissed confirming the conviction and sentences recorded against the appellant by the I Additional Sessions Judge, Vizianagaram, vide judgment dated 14.12.2010, in Sessions Case No.181 of 2008, for the offences under Sections 302 and 201 IPC.

39. A perusal of the record shows that by order dated 15.11.2016 this Court has granted bail to the appellant as he has served more than five years of the sentence, following the order of this Court in *Batchu Ranga Rao v. State of A.P.*¹. Therefore, the appellant shall surrender himself before the Superintendent, Central Jail, Visakhapatnam, forthwith, to serve the remainder of sentence.



C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 03.07.2017
Dsr/smr

¹ 2016 (3) ALT (Crl.) 505 (DB)(AP)