

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

CRL.A.No.1441 of 2010 & CRL.R.C.No.941 of 2010

Crl.A.No.1441 of 2010

Between:

The State of A.P. represented by the
Public Prosecutor, High Court of A.P.
Hyderabad.

..Appellant

And

1.Sivala Chandra Reddy, 30 years,
S/o Muni Reddy, Eguva Muddikuppam, S.R.Puram
Mandal, Chittoor District and 4 others

..Respondents

CRL.R.C.No.941 of 2010

K.Doraswamy Reddy, S/o K.Muni Reddy,
R/o Ammapalle village, Karvetinagaram Mandal,
Chittoor District.

...Petitioner

And

The State of A.P. represented by the
Public Prosecutor, High Court of A.P.
Hyderabad and 5 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 01-06-2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI**

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|---|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to
see the fair copy of the Judgment? | Yes/No |

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

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CRL.A.No.1441 of 2010

The State of A.P. represented by the Public Prosecutor,
High Court of A.P. Hyderabad.

...Appellant

Vs.

\$ 1.Sivala Chandra Reddy, S/o Muni Reddy and 4 others

... Respondents

CRL.R.C.No.941 of 2010

K.Doraswamy Reddy, S/o K.Muni Reddy

...Petitioner

Vs.

\$ The State of A.P. represented by the Public Prosecutor,
High Court of A.P. Hyderabad and 5 others

... Respondents

! COUNSEL FOR THE APPELLANT/State : Public Prosecutor (AP)

!COUNSEL FOR THE REVISION PETITIONER: Mr.A.Chandraiah Naidu

^COUNSEL FOR THE RESPONDENTS/ACCUSED: Mr.Masthan Naidu
Cherukuri

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>HEAD NOTE:

? CITATIONS:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

CRL.A.No.1441 of 2010 & CRL.R.C.No.941 of 2010

COMMON JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The State has filed Crl.A.No. 1441 of 2010 assailing the judgment dated 30.6.2009 in Sessions Case No. 150 of 2007 on the file of the V-Additional District & Sessions Judge, Tirupati, whereby all the five accused were acquitted of the charge under Section 302 read with 34 IPC. The defacto-complainant-P.W.1 filed Crl.R.C.No. 941 of 2010 questioning the same judgment.

We have heard the learned Public Prosecutor appearing for the State of Andhra Pradesh, Mr. A. Chandraiah Naidu, learned counsel for the defacto-complainant-P.W.1, the revision petitioner in criminal revision case and Mr. Cherukuri Masthan Naidu, learned counsel appearing for all the accused in both the cases.

The parties are referred to as they are arrayed in the Sessions Case.

The case of the prosecution, in brief, as reflected in the charge sheet is that A1 to A3 are residents of Eguva Mudikuppam village of SR Puram Mandal and A4 and A5 are residents of Ammapalli village, K. Nagar Mandal; that A1 is the husband of the deceased Radha, A2 is the mother of A1, A3 is

the junior paternal uncle of A1, A4 is the younger sister of A1 and A5 is the husband of A4; that on 11.11.2006 at 12.00 noon the Sub-Inspector of Police, S.R. Puram Police Station received a written report from P.W.1, the father of the deceased, wherein he stated that the marriage of his daughter-deceased with A1 was celebrated at Tirumala, that they were blessed with two daughters viz., Lakshmi, aged about 3 years and Shanti, aged about 2 years and there were no disputes between the couple since their marriage; that often the deceased was suffering from stomach-ache; that on 11.11.2006 P.W.1 received information through one Koneti Chenga Reddy s/o Koneti Muni Reddy of Eguva Mudikuppam village regarding the death of the deceased at her matrimonial house; that immediately he along with his wife Padmavathamma, his son Koneti Eswara Reddy and Annareddi Govinda Reddy, the husband of his sister-in-law, and other relatives went to the house of A1, found the dead body of the deceased which was kept on a mat and there were no external injuries on her body; and that the enquiries from the villagers did not reveal any suspicion about the death of the deceased and that the deceased died of natural death.

That a case in Cr.No. 48 of 2006 was registered under Section 174 Cr.P.C. by the Sub-Inspector of Police, SR Puram Police Station on 11.11.2006 at 12.00 noon and the case was

investigated; that inquest over the dead body of the deceased was held and the dead body was sent for post mortem examination; and that after receipt of Ex.P8-post mortem report along with final opinion, the section of law was altered to Section 302 IPC on 15.11.2006 at 4.00 P.M.

That during the course of investigation, from the statements of witnesses it was disclosed that the marriage of the deceased with A1 had taken place on 23.8.2002 and they lived happily for some days; that about three months after the marriage, A1 had taken his wife to the house of his concubine Saroja at Jeevakona, Tirupati and forced her to live in the house of the said Saroja for some days; that after coming to know about the illegal intimacy of A1 with Saroja, the deceased questioned A1 who paid a deaf-ear and the deceased thereupon went and complained to her parents; that A1 later on visited the house of P.W.1 and took the deceased to his house promising that he will look after her well and thereafter two children were born to them, but A1 did not change his attitude even after the birth of the second child and differences between them persisted; that the deceased lodged a complaint against A1 at Tirupati East Police Station regarding his illegal intimacy with Saroja; that on the intervention of the village elders including P.W.7, A1 executed Ex.P2, a conditional letter stating that he

will look after the welfare of his wife and children properly and that if he fails to do so, he will return 12 sovereigns of gold jewellery, cash of Rs.50,000/- and in addition thereto, he will register 10 kuntas of land each in the name of his daughters and on that assurance, the deceased had returned back to her matrimonial home to live with A1; that A1 continued his illegal intimacy with Saroja and A2 to A5 were supporting A1 in his illegal activities; that A1 brought the son of her concubine Saroja, kept him in his house and warned the deceased that she should take care of him very well, otherwise he would kill her with the support of his family members; that the deceased went to her parents' house and informed the same to them and two days later, P.W.1 brought the deceased to the house of A1, dropped her at his house with a request to look after her well and left the place; that about one month prior to the death of the deceased, on two occasions the deceased went to the house of P.W.1 and complained that all the accused were hatching a plan to do away with her life; that the village elders convened a panchayath and chastised A1 to look after her well and in the said panchayath, A1 agreed to return gold jewellery given at the time of their marriage and also give the landed properties to his daughters; that while so, on the night of 10.11.2006 at about 9.00 P.M. A1 went to a temple where a chit was held and after

bidding the chit, A1 slept at the house of one Venkatesh Reddy; that at about 2.15 AM on the intervening night of 10/11.11.2006 A1 received information about the death of his wife-deceased at his house; that he thereupon went to his house and saw the dead body of his wife; that on information, P.W.1 and his family members reached the house of A1 and saw the dead body of the deceased and all the accused requested P.W.1 not to give any complaint against them for the sake of children and promised to return the gold jewellery and cash and give landed property to the children of the deceased and thus P.W.1 was convinced not to give any report against the accused; that after cremation of the deceased, P.W.1 and other family members came to know about the suspicious death of the deceased; and that as promised, the accused registered 10 kuntas of landed property in the names of the two children of the deceased.

That during the course of further investigation, on 29.11.2006 at 3.30 PM L.W.15-Ganapathi Vijayavelu Reddy appeared before P.W.13-Inspector of Police, K. Nagar Circle and produced the five accused along with a report stating that the accused made an extra-judicial confession to him to the effect that they committed the offence, as A1 got vexed with his wife because she knew about the illegal intimacy of A1 with one Saroja and therefore, all the accused decided to do away

with her and in pursuance thereof, they forcibly administered liquor mixed with mercury and insecticide poison to the deceased and when she attempted to resist them, A2 to A4 caught hold of her, A1 pressed a pillow firmly on the face of the deceased till she died and thus they killed her; that P.W.13 secured the presence of mediators-P.Ws. 8 and 9, arrested all the accused at 3.30 P.M. and interrogated them in the presence of the said mediators and all the five accused admitted to have committed the offence; that A1 confessed that after committing the offence, he abandoned the liquor bottle in the nearby dilapidated pit and promised to produce it, if they followed him and in pursuance of the confessional statement made by him, A1 led the police party and mediators to the dilapidated pit nearby the house of the accused at 5.30 P.M. and A1 brought one cork contained nip bottle which contained a little quantity of liquor and the same was seized under the cover of a panchanama which was duly attested by mediators and subsequently the accused were sent for remand; that P.W.10 and L.W.24 conducted autopsy over the dead body of the deceased, preserved the viscera of the deceased and reserved their opinion, that however they gave a preliminary opinion stating that the post mortem finding is suggestive of asphyxia due to obstruction to air passage and that thereby a prima facie

case of murder is made out against all the accused; and that after receiving preliminary medical opinion, a preliminary charge sheet was filed and it is stated in the said charge sheet that a final charge sheet will be filed on receipt of final medical opinion as to the cause of death on receipt of RFSL report from the Regional Director, RFSL, Tirupati. However, it appears that no subsequent charge sheet was filed in the case.

The following charge was framed against the accused by the trial Court, which reads as under:

“Firstly that you A-1 to A-5 on 29.11.2006 at 3.30 P.M confessed before Panchayat Secretary of Muddikuppam panchayat of S.R.Puram Mandal that you have made your extra judicial confession that you have committed the offence that you killed Radha brutally by pouring liquor mixed with mercury and insecticide poison, A-2 to A-5 of you caught hold of the deceased Radha forcibly and A-1 of you pressed a pillow firmly on the face of the deceased till her death and committed the offence under Section 302 read with Section 34 of Indian Penal Code and within the cognizance of Court of Sessions.”

The accused denied the said charge, pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined P.Ws.1 to 13 and got Exs.P1 to P17 marked. It has also produced M.O.1-Quarter Brandy bottle. On behalf of the accused, no evidence was adduced.

On appreciation of evidence on record, the trial Court held that the prosecution failed to prove the charge framed against the accused beyond all reasonable doubt and accordingly it has acquitted them.

At the hearing, the learned Public Prosecutor for the State and Sri A.Chandraiah Naidu, learned Counsel for the *de facto complainant*/revision petitioner strenuously submitted that the evidence of P.W.1, P.W.2, P.W.7 and P.W.10 clinchingly establishes that the death of the deceased was homicidal one and that all the accused are responsible for the said death. They have further argued that the evidence of P.W.7, a mediator, and Ex.P2-Undertaking letter executed by A-1, would clearly prove that A-1 had illicit relationship with a woman by name Saroja and as the deceased was found to be an obstacle in the way of A-1 maintaining their illicit relationship, all the accused had hatched a plan to eliminate the deceased.

Sri Masthan Naidu Cherukuri, learned Counsel for the accused, however, referred to the inherent contradictions in the stand of the prosecution witnesses at different stages and

submitted that the accused have been falsely implicated and that the contents of Ex.P1 and also Section 161 Cr.P.C. statement of P.W.1 disclose that the death was natural as the deceased was suffering from stomach pain.

We have carefully considered the submissions of the learned Counsel for both parties and perused the material on record.

This case is based on circumstantial evidence. The law is well settled that in a case based on circumstantial evidence, motive plays an important role. In this case, as could be seen from the charge sheet, the motive for the accused to do away with the life of the deceased was the alleged illicit intimacy of A1 with one Saroja and the deceased questioning A1 about the same. It is not the case of the prosecution that A-2 to A-5 had any individual motive for doing away with the life of the deceased. If at all, A-1, who allegedly had illicit intimacy with Saroja, would have had the motive for committing the death of his wife. It is, therefore, not possible to accept the version of the prosecution that A-2 to A5 have shared common motive with A-1 for eliminating the deceased to pave way for the latter to continue his illicit relationship with another woman. This part of the prosecution version appears to be wholly unnatural as generally, illicit relationship is considered as a taboo in the

society and other family members would not generally approve of such relationship. At any rate, it is not possible to believe that in order to facilitate A-1 to continue with his illicit relationship with another woman, A-2 to A-5 would have joined A1 in hatching a plan to eliminate the deceased. Therefore, the very motive pleaded by the prosecution appears to be inherently weak.

As regards the evidence on record, Ex.P1, the report given by P.W.1, the father of the deceased, reflects his earliest version on the death of her daughter. P.W.1 stated therein that the deceased and A-1 led happy marital life without any disputes; that the deceased used to suffer stomach pain and he came to know about the death of his daughter through a third party and on arrival at the matrimonial home of his daughter, he made enquiries, which revealed that the death of his daughter was natural and that he could not find any injuries on the body of the deceased. He further stated that he did not have any suspicion about the death of his daughter. Five days after the death, P.W.1 had given a statement under Section 161 Cr.P.C., wherein also he reiterated his stand as reflected in Ex.P1. Even in Ex.P5-Inquest report, it is stated that the deceased was suffering from stomach pain for two years before her death and because of the said reason, the deceased died.

Thereafter, there is a marginal shift in the case of the prosecution. In his evidence P.W.1 has reneged on his earliest version. He stated in his evidence that due to illicit intimacy with one Saroja by A-1, differences cropped up between A-1 and the deceased; that A-1 used to harass the deceased and on the intervention of elders, a police complaint given against A-1 was withdrawn; that when he visited the dead body of his daughter, he saw a bottle near the dead body; that he had given a complaint to the police on suspicious death of the deceased. In his cross-examination, P.W.1 admitted that in Ex.P1 he stated that A-1 and the deceased lived happily and that he reiterated the same thing during investigation and that he has also stated that the deceased died due to stomach pain. He has also admitted that he has stated in Ex.P1 that no injuries were found on the dead body of the deceased. Nowhere in his evidence, P.W.1 explained the reason for his *volte-face* from his previous version. In the charge sheet, it is sought to explain that as the accused convinced P.W.1 that if he does not complain against them, they will return the jewellery and property, he did not complain against the accused. But, this explanation has not come forth from P.W.1 himself. In our opinion, when the witness has come out with diagonally opposite versions, it is always safe to rely upon the earliest version.

P.W.2, the son of P.W.1, also deposed on the same lines as his father did. P.W.7, the alleged mediator, was examined to prove that A-1 had illicit intimacy with one Saroja and in that connection A-1 executed Ex.P2 letter. Though in the cross-examination of P.W.7 it was put to him that there was difference in ink in the contents of Ex.P2 and its contents were subsequently incorporated after obtaining the signatures, no suggestion was put to him that the signature on Ex.P2 did not belong to A-1. Assuming that A-1 had illicit intimacy with one Saroja and that he executed Ex.P2, that by itself would not prove the case of the prosecution that he along with other family members have done away with the life of the deceased.

The learned Public Prosecutor has placed heavy reliance on the medical evidence such as Ex.P8-Post Mortem Certificate and the oral testimony of P.W.10-doctor, who conducted post mortem examination on the dead body of the deceased. A perusal of Ex.P8 shows that there were no significant external injuries except right eye blocking and the preliminary finding on the cause of death was due to obstruction to air passage. However, in the final opinion, it is stated as under:

“The deceased would have been (sic) died of Manocrotophos, an insecticide poison and mercury, a Metallic poison along with Ethyl alcohol which causes cardio respiratory failure.”

It is significant to note in this connection that the charge sheet was filed based on the preliminary opinion of the doctor which was suggestive of asphyxia due to obstruction to air passage. However, in the final opinion, the cause of death was shown as insecticide poison and metallic poison along with Ethyl alcohol which causes cardio respiratory failure. As noted herein before, contrary to what is stated in the preliminary charge sheet the prosecution has not filed final charge sheet based on the final opinion on the cause of death. It is further significant to note that in the charge framed by the trial Court, it is alleged that the accused have committed the offence by pouring liquor mixed with mercury, an insecticide poison, and also pressing a pillow firmly on the face of the deceased till her death. Thus, while the charge sheet as also the charge framed by the Court are suggestive of both poisoning as well as smothering with pillow as the cause of death, the final opinion suggested only poisoning as the cause of death of the deceased. Thus, the charge of cause of death due to asphyxia has not been supported by the medical evidence.

As regards the death due to poisoning, the trial Court has taken a view which we commend and it reads as follows:

“Coming to the Post Mortem certificate P.W.10 the Doctor evidence reveal that the deceased would have died of manocrotopas an insecticide poison and mercury metallic poison along with Ethyl alcohol. It is the case of prosecution that accused administered the poison forcibly by pouring the same into the mouth of deceased. As already referred there is no direct witness for the same. There is much delay in sending viscera and liquor bottle to scientific officer, P.W.12, for chemical analysis. The viscera was preserved on 12.11.2006, but the same was sent along with liquor bottle in two card board boxes on 08.12.2006. The police kept the viscera in their custody for 26 days and the liquor bottle for 9 days in their custody. So, there is any amount of suspicion about the keeping the viscera and liquor bottle by the police till the arrest of accused by them. Moreover the viscera contain mercury metallic poison along with Ethyl alcohol. According to P.W.10, mercury is a corrosive substance and it caused damage to the lips, mouth, throat and oesophages. But, there is no corrosive appearance on the lips, mouth and throat of the deceased to fix up the liability against the accused that they poured manocrotopas mercury metallic poison in the mouth of deceased and killed her.”

On a careful appreciation of the entire oral and documentary evidence on record and the reasons assigned by the trial Court, we are of the opinion that the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt and that the trial Court has rightly acquitted all the accused of the charge framed against them. Hence, we do not find any merit in this appeal as well as in the revision.

Accordingly, the Criminal Appeal and the Criminal Revision Case are dismissed.

**C.V.NAGARJUNA REDDY, J**

J.UMA DEVI, J

01.06.2017
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