

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Criminal Appeal No.908 of 2011

Between:

Budda Gangadharam

... Appellant

and

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

...Respondent

Date of Judgment Pronounced: 03-07-2018

Submitted for Approval:

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

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

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
+ Criminal Appeal No.908 of 2011

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! Counsel for the Appellant: Mr.T.S.Anirudh Reddy
for Mr.T.Pradumna Kumar Reddy

^ Counsel for the respondent: Public Prosecutor (AP)

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? Cases cited:

2018 (2) ALT (Crl.) 60 (SC)
1994 Suppl. (2) SCC 372
(2003) 3 SCC 353
(2005) 3 SCC 114
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Counsel for the appellant:

Mr.T.S.Anirudh Reddy
for Mr.T.Pradyumna Kumar Reddy

Counsel for respondent:

Public Prosecutor (AP)

The Court made the following:



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

The sole accused in Sessions Case No.264 of 2011 on the file of the VII Additional District and Sessions Judge (FTC), Madanapalli (for short 'the lower Court'), filed this Criminal Appeal against Judgment, dated 20.07.2011, passed therein, whereby he has been convicted for the offences punishable under Sections 302 and 201 IPC and sentenced to suffer Imprisonment for Life for the former offence and Simple Imprisonment for three years for the latter offence.

The case of the Prosecution, as reflected from the charge sheet, is as follows:

The appellant is a distant relative of Devarinti Vedavathi (hereinafter referred to as 'the deceased'), who is the daughter of PWs.1 and 2. The appellant proposed the deceased to marry him but she refused. On 26.02.2009, at about 3.00 p.m., the appellant along with one R.Umapathi kidnapped the deceased, dragged her into the bushes of Gundlagutta hillock and attempted to commit rape on her. On a complaint made by the deceased, a case in Crime No.16 of 2009 on the file of Somala Police Station was registered against the appellant and another for the offences punishable under Sections 365, 376 r/w 511 IPC. In this

connection, the appellant was arrested on 10-03-2009 and remanded to judicial custody. Subsequently, he was released on bail. The appellant approached the deceased and asked her either to marry him or to withdraw the case filed by her. When the deceased rejected his request, he bore grudge against her and also threatened her with dire consequences.

While so, on 18-04-2009, at about 7.30 a.m., PWs.1 and 2 went to the fields and when they returned, they did not find the deceased in the house. On enquiry in the village, PW.5 informed them that the deceased went to the fields of one B.Ramesh Babu. Then, PWs.1, 2, 3 and 5 searched for the deceased in the fields but did not find her. On suspicion, they looked into the agricultural well situated in the fields and on stirring the water with the help of Pathala Beri, they found the dead body of the deceased.

At about 2.00 p.m., on that day, PW.1 went to Somala Police Station and gave Ex.P.1- complaint stating that the deceased committed suicide by drowning herself in the well. Based on the said report, PW.14- Sub-Inspector of Police, Somala Police Station, registered a case in Crime No.43 of 2009 under Section 174 Cr.P.C, held inquest over the deadbody of the deceased in the presence of PWs.1 to 5, PW.9, LW.11- Mallela Gurrappa and LW.12- Pongulabala Rameswara Prasad and sent the dead body

for autopsy to the Medical Officer, Community Health Center, Punganur. PW.10- Civil Assistant Surgeon, Community Health Center, Punganur, conducted autopsy over the dead body of the deceased and issued Ex.P.3- Postmortem Certificate opining that the deceased would appear to have died due to throttling. Hence, PW.14 altered the Section of law from Section 174 Cr.P.C. to Sections 302 and 201 IPC.

On 22-05-2009 at 2.00 p.m., PWs.13 and 11, before whom the appellant confessed about his murdering the deceased by throttling her neck, produced the appellant before PW.14 along with Ex.P.13- report. PW.14 arrested the appellant in their presence under a cover of Mahazar. The appellant led the Police to the scene of offence where PW.14 prepared Ex.P.6- Scene Observation Mahazar duly attested by PWs.13 and 11. Later, the appellant was sent for remand. After completing investigation, PW.12- Inspector of Police, Punganur Police Station, filed a charge sheet.

Based on the chargesheet and the material collected during the course of investigation, the trial Court framed the following charges:

“Firstly:

That you on 18.04.2009 at about 7.30 AM at Dhonimakulacheruvuvanka near the agricultural well of Ramesh

Babu at Annemmagaripalle, Somala mandal due to your previous grudge did commit the murder of Devarinti Vedavathi, aged 19 years D/o D.Venkatappa intentionally or knowingly by caught holding her and pressed her neck with your hands and that you thereby committed an offence punishable under section 302 I.P.C. and within my cognizance.

Secondly:

That you at the same time and place and in the course of the same transaction referred to in charge No.1, you commit the murder of Devarinti Vedavathi punishable under Section 302 I.P.C. did cause certain evidence of the said offence to disappear to wit ; you committed the said murder at Dhonimakulacheruvu vanka near the agricultural well and you took the deadbody of the deceased and threw the dead body in the agricultural well of Ramesh Babu with the intention of screening the said offence from legal punishment and thereby committed an offence punishable under section 201 I.P.C. and within my cognizance.”

The plea of the appellant being one of denial, he was subjected to trial, during which, the Prosecution has examined PWs.1 to 14 and got Exs.P.1 to P.14 marked. On behalf of the defence, no oral evidence was let in. However, it has got Exs.D.1 to D.3 marked.

On appreciation of both oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

At the hearing, Mr.T.S.Anirudh Reddy, learned Counsel representing Mr.T.Pradyumna Kumar Reddy, learned Counsel for

the appellant, submitted that the Court below has fallen into a serious error in accepting the last seen theory propounded by the Prosecution through PWs.7 and 8 apart from relying upon the fact that the appellant has come out with a false plea under Section 313 Cr.P.C. statement that the deceased has committed suicide. He has argued that the evidence of PWs.7 and 8 is highly artificial and that therefore, the Court below ought not to have relied upon such untrustworthy evidence. The learned Counsel further submitted that even if the appellant has stated that the deceased has committed suicide, he is not liable for conviction unless the Prosecution was able to discharge the initial burden by proving that the appellant is connected with the death of the deceased and that in the present case, the Prosecution has miserably failed to discharge this burden.

Opposing the above submissions, the learned Public Prosecutor submitted that admittedly, the appellant was accused in a case registered *inter alia* for the offence under Section 376 IPC on the complaint given by the deceased; that therefore, he had developed motive against the deceased; that in this background, PW.8 had seen him following the deceased prior to the occurrence and that therefore, the lower Court has rightly dealt with the

Prosecution case and convicted the appellant for the offence under Section 302 IPC.

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

Let us first discuss the aspect of motive. It is not in dispute that the appellant was prosecuted for the alleged kidnap and attempt to commit rape on the deceased, arrested on 10.03.2009 and sent for remand. A few days before the date of occurrence, the appellant was released on bail. It is the further case of the Prosecution that after the appellant came out on bail, he started demanding the deceased either to marry him or to withdraw the Criminal Case. As far as the former part of the Prosecution case is concerned, there is no dispute, but, there is no evidence in support of the latter part of the Prosecution case that the appellant was demanding the deceased either to marry him or to withdraw the Criminal Case. However, the first part of the Prosecution version is sufficient to prove the motive for the appellant to kill the deceased. Though in a case based on circumstantial evidence motive plays crucial role, that by itself is not the be-all and end-all. Motive would only form a link in the chain of circumstances and unless the Prosecution establishes all other links to complete the

chain, a person cannot be convicted, as that would amount to conviction based on mere suspicion rather than on proof.

We shall now consider whether the Prosecution was able to establish other links in the chain of circumstances.

In order to prove its case, the Prosecution has heavily relied upon the evidence of PWs.7 and 8. PW.7 deposed that he is related to PWs.1 and 2; that he knows the deceased and the appellant; that on the date of the death of the deceased at 7.00 or 7.30 a.m., he went to Dhonimakula Palle Cheruvu Vanka to attend nature calls; that he heard the cries of a woman; that thereupon, he came to the bank of the stream; and that he saw the appellant carrying a female dead body. He further deposed that two months thereafter, he told the same to the Circle Inspector of Police. In the cross-examination, he has admitted that he has not witnessed the deceased being killed by the appellant; that several bushes existed between the Vanka and the well; and that he did not know whom the appellant was carrying. He further stated that he cannot say whether the person, who was being carried by the appellant, was a dead person or an injured. He also admitted that the woman folk do not go to the vanka for attending nature calls. He has also stated that he has not revealed what he has seen either

to PWs.1 and 2 or to other villagers or even to his wife and neighbours. He further deposed that while he has lands at a distance of 1 km from the vanka, the appellant had no landed property near vanka. He also admitted that he has not stated to the Circle Inspector about the date and time of death of the deceased.

The evidence of PW.7 defies natural human conduct. He is admittedly related to PWs.1 and 2. By 11.00 a.m., on the fateful day, the news of death of the deceased was known to everyone. No person of ordinary prudence would fail to reveal what he has seen to the parents of the deceased and the villagers. The fact that PW.7 remained silent for two months after the occurrence itself is sufficient to conclude that he was roped in by the Police as an after thought in order to put forth the last seen theory. We are, therefore, of the opinion that it is wholly unsafe to rely upon the evidence of PW.7 whose testimony does not look natural or credible.

As regards PW.8, he is also a native of the same village as that of the appellant, deceased and her family members. He has deposed that when he was going to the fields of one Ramesh Babu, one Venkataswamy was coming in opposite direction to

him and he saw the deceased going towards Vanka and the appellant following her at a distance of 200 feet. He has further deposed that he has overtaken both the appellant and the deceased, who were also proceeding in the same direction as he was; that at about 11.00 a.m., on that day, when he returned to his house, he observed the people going towards the well; and that when he reached the well, he has seen the dead body of the deceased being retrieved from the well water and laid on the ground. He admitted that he has not revealed these facts to any of the villagers as the appellant used to talk “in a rowdy voice” and that two months thereafter, he has made his statement before the Punganur Circle Inspector. In his cross-examination, he has admitted that PW.2 is his sister by courtesy and that the appellant is also his relative but no relationship existed with him at present. He further stated that he has also seen some other people moving on the same way; and that he has not spoken to the appellant or the deceased when he overtook them. He further deposed that he has not informed the Police or PWs.1 and 2 about the fact of his seeing the appellant and the deceased on the date of occurrence.

The evidence of PW.8 also suffers from the same shortcomings as that of PW.7. Atleast when the news of the death of the deceased broke out, PW.8 would have revealed, as to

what he has observed earlier, to PWs.1 and 2, who are the parents of the deceased, instead of keeping silent for two months. This fact is sufficient to presume that like PW.7, this witness was also roped in by the Prosecution to bolster the last seen theory. Assuming that PW.8 has observed the appellant going behind the deceased 200 meters away, that by itself cannot constitute the sole basis to convict the appellant.

The law is well settled that though the last seen theory is an important circumstance in a case based on circumstantial evidence, the same alone is not sufficient to establish the guilt of the accused beyond reasonable doubt and it requires corroboration (See **Navaneethakrishnan v. State by Inspector of Police**¹, **Arjun Marik vs. State of Bihar**², **State of Karanataka vs. M.V.Mahesh**³, **State of U.P. vs. Satish**⁴, **Sahadevan vs. State of Tamilnadu**⁵)

PW.13, before whom the appellant is stated to have made the extra judicial confession, has turned hostile and nothing worth mentioning could be elicited from him by the Prosecution. Except the evidence of PWs.7 and 8 and the alleged extra-judicial confession made by the appellant to PW.13, no other evidence is

¹ 2018 (2) ALT (Crl.) 60 (SC)

² 1994 Suppl. (2) SCC 372

³ (2003) 3 SCC 353

⁴ (2005) 3 SCC 114

⁵ (2012) 6 SCC 403

let in by the Prosecution to corroborate the last seen theory. Howsoever strong suspicion may be, it cannot take the place of proof. The Prosecution failed to adduce legally acceptable evidence to hold the appellant guilty of committing the murder of the deceased beyond reasonable doubt.

Coming to the last aspect *viz.*, the plea of suicide put forth by the appellant in his examination under Section 313 Cr.P.C., even if this plea was found incorrect, that cannot be a stand alone consideration to convict the appellant in the absence of corroborating evidence. When the Prosecution failed to discharge the burden placed on it to show that the appellant was, in any way, connected with the death of the deceased, even if the appellant has come out with an incorrect theory as to the cause of death, he cannot be found guilty of the commission of the offence.

In the light of the above discussion, we are of the opinion that the Prosecution has failed to discharge the burden beyond reasonable doubt and that therefore, the appellant is entitled to the benefit of doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused for the offence punishable under Section 302 IPC in the Judgment, dated

20.07.2011, in Sessions Case No.264 of 2011, on the file of the learned VII Additional District & Sessions Judge (FTC), Madanapalle, Chittoor District, are set aside. The fine amount, if any, paid by him shall be refunded to him. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 3rd July, 2018

Note:
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