

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

**CRIMINAL APPEAL No.601 of 2012**

Between:

Nalla Anjaneyulu

.....Appellant

and

The State of Telangana,  
represented by the Public Prosecutor (T.S.)

.....Respondent

**JUDGMENT PRONOUNCED ON: 01<sup>st</sup> October, 2018**

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SMT JUSTICE T.RAJANI**

1. Whether Reporters of local  
Newspapers may be allowed : Yes/No  
to see the Judgments?

2. Whether the copies of  
judgment may be marked to : Yes/No  
Law Reporters/Journals?

3. Whether their Ladyship/Lordship  
wish to see fair copy of the : Yes/No  
Judgment?

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

**T.RAJANI, J**

**\*THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY  
AND  
THE HON'BLE SMT JUSTICE T.RAJANI**

**+ CRIMINAL APPEAL No.601 of 2012**

% 01.10.2018

# Nalla Anjaneyulu

.....Appellant

Vs.

\$ The State of Telangana,  
represented by the Public Prosecutor (T.S.)

.....Respondent

! Counsel for the appellant: Mrs.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

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>Head Note:

? Cases referred:

1. 2011(11) SCC 754
2. (2008) 15 SCC 449
3. (2011) 3 SCC 109

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Between:

Nalla Anjaneyulu

.....Appellant

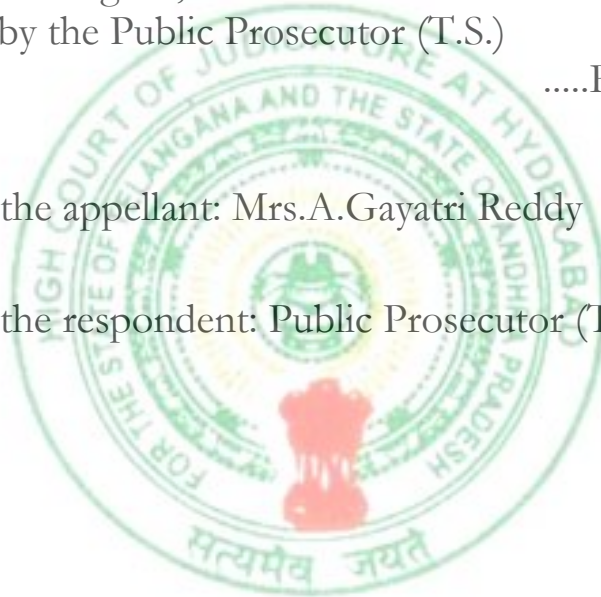
And

The State of Telangana,  
represented by the Public Prosecutor (T.S.)

.....Respondent

Counsel for the appellant: Mrs.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (T.S.)



The Court made the following:

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

This Criminal Appeal by accused No.1 in Sessions Case No.357 of 2009 assails judgment, dated 04.03.2011, on the file of the Principal Sessions Judge, Nalgonda, whereby he has been convicted for the offences punishable under Sections 302 and 379 I.P.C. and sentenced to undergo imprisonment for life and also to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for three months for the former offence and to undergo rigorous imprisonment for one year and also to pay a fine of Rs.500/- and in default of payment of fine, to suffer simple imprisonment for one month for the latter offence. Both the sentences were directed to run concurrently.

2. As the case of the prosecution has been stated in detail by the Court below, it is not necessary to repeat the same. It will suffice to note that based on the charge sheet filed by the Police after investigation and the material collected by them, the Court below framed the following charges:

“Firstly: That you A-1 and A-2 on 25-9-2008 at about 7-00 p.m. near Urban Colony Phase-II, near Railway Track at Bhongir Town did commit murder of Pentamma, who is concubine of A-1 of you by strangulation with her saree edge (kongu) in order to commit theft of her ornaments and that

you thereby committed an offence punishable under Sec. 302 IPC and within my cognizance.

Lastly: That you A-1 and A-2 on the above date, time and place as mentioned in charge No.1 committed theft of ornaments i.e., gold nuptial thread, pair of gold ear studs and a pair of silver ankle chains out of the possession of the deceased Pentamma after killing her and that you thereby committed an offence punishable under Sec. 379 IPC and within my cognizance.”

3. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 19, got Exs.P-1 to P-17 marked and produced M.Os.1 to 8. On behalf of the accused, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below, while acquitting accused No.2, convicted and sentenced the appellant-accused No.1 as noted hereinbefore.

4. Mrs. A.Gayatri Reddy, learned counsel for the appellant-accused No.1, has submitted that the case of the prosecution was based on the last seen theory and recoveries, and that both having not been properly proved by the prosecution beyond reasonable doubt, the Court below has wrongly convicted the appellant.

5. Opposing the above submissions, the learned Public Prosecutor for the State of Telangana has submitted that the



prosecution has let in credible evidence to prove motive, the last seen theory and recoveries and that, therefore, the judgment of the Court below does not call for any interference.

6. We have carefully considered the respective submissions of the learned counsel for both the parties with reference to the record.

7. In a case based on circumstantial evidence, motive plays a significant role. The prosecution has put-forth intention to commit theft as the motive to kill the deceased with whom the appellant allegedly had illicit intimacy. No prosecution witness spoke about the appellant nursing the motive as alleged by the prosecution. We may, however, hasten to add that motive being in the mind of the appellant, one cannot expect the prosecution to prove the same by adducing evidence. Therefore, a case of this nature depends upon the other corroborative circumstances to finally conclude whether the appellant had motive to kill the deceased or not.

8. As rightly submitted by the learned counsel for the appellant, the case of the prosecution is mainly dependant upon the last seen theory and recoveries. Therefore, we shall discuss these two aspects with reference to the evidence.

9. P.Ws.4, 6, 7, 18 and 19 are cited as witnesses to speak about the last seen theory. P.W-4 - the father of the deceased, deposed that the deceased was residing with him in Kothapet after the death of her husband and that she was doing tailoring work at his house at Itikyala Village. It thus appears that the deceased was staying at both the places.

10. P.W.6, a resident of Itikyala Village, deposed that she knows the deceased; that the deceased was doing tailoring work at her house at Itikyala Village; that the appellant was a tenant of the deceased for about two years; and that both of them were having illicit intimacy with each other. She further deposed that about two years back, the deceased came from Kothapet to Itikyala Village, kept some articles in her house and boarded an auto to go to Yadagirigutta to see her daughter, who was suffering from fever; that she saw the appellant also boarding the said auto, in which the deceased was travelling, and after that she came to know that the deceased has not reached her daughter's house; and that, thereafter, they searched for the deceased. In her cross-examination, the witness deposed that she was a member of Mahila Sangam along with the deceased which consisted of ten members; that she does not know the date of death of the deceased; that she saw the deceased when she boarded the auto; and that she did

not know that for three days the deceased was missing prior to her death and whether P.W.4 going to Jagadevpur Police Station to lodge a complaint about the missing of the deceased. She further deposed that she did not inform the elders and the Sarpanch of Itikyala Village that she saw the appellant travelling with the deceased in an auto. If we closely analyse the evidence of P.W.6, we find that her behaviour is somewhat unnatural. If she really saw the appellant boarding the auto along with the deceased, she would have disclosed the said fact to P.W.4 when she along with others was searching for the deceased. She candidly admitted in her cross-examination that she did not inform about the said fact to anybody in the Village.

11. As regards P.W.7, a native of Itikyala Village, her testimony is almost on similar lines as that of P.W.6. When a suggestion was put to her in the cross-examination that she did not state before the Police that she saw the appellant boarding the auto, which the deceased boarded, she denied the same. Though no omission from P.W.16 - the Investigating Officer, could be elicited in this regard, we, however, find that P.W.7 has not claimed to have informed the elders immediately about her seeing the appellant boarding the auto with the deceased when the fact of the missing of the deceased came to



her knowledge. Therefore, the evidence of P.W.7 also does not inspire confidence.

12. Coming to the evidence of P.W.18, he deposed that he is a resident of Kothapet Village. He further deposed that about two years back, he started in an auto to go to Jagadevpur market; that the deceased also boarded the said auto at about 4.00 p.m. at Kothapet Village; that their auto stopped at Jagadevpur near the house of the deceased; that the deceased went inside her house and again boarded the same auto; that after some distance, one person also boarded the said auto; that he cannot identify the said person; that after the auto reached Jagadevpur, the deceased informed the witness that she was going to Yadagirigutta to see her daughter who was suffering from fever; and that thereafter, the witness left for market at Jagadevpur. He also deposed that he was not examined by the Police. He also failed to identify whether the appellant, who was present in the Court hall, was the one who boarded the auto on that day. The evidence of P.W.18 is of no help to the prosecution because he failed to identify the appellant as the one who boarded the auto along with the deceased.

13. P.W.19, who claims to be a resident of Itikyala Village, also made a parrot-like repetition as P.Ws.6 and 7 did on the aspect of the deceased stopping the auto at her tailoring shop in

Itikyala Village, going inside the shop and again boarding the same auto and the appellant boarding the auto after some distance. In his cross-examination, he deposed that he cannot give the auto number and the name of the auto driver. It was suggested to the witness that the appellant has not boarded the auto as stated by him and that he was tutored by the Police at whose instance he was deposing falsehood. Even if we do not find specific *lacunae* in the evidence of P.W.19, in the absence of any corroborative evidence, it is not safe to rely upon his sole testimony to come to the definite conclusion that the appellant went along with the deceased on the fateful day.

14. As the last seen theory being only one of the links in the chain of circumstances, the burden heavily lies on the prosecution to bring home the guilt of the appellant beyond all reasonable doubts by adducing credible and corroborative evidence. For this purpose, the prosecution placed heavy reliance on the recoveries. The prosecution relied upon Ex.P-10 - the alleged confessional statement of the appellant, and Ex.P-11 - the recovery panchanama relating to M.O.2. P.W.13 was examined as the panch witness for both these documents. He deposed that he is an auto driver; that about two years and two months back, the Police called him and L.W.21 - Boyapally Bal Reddy to the Police Station; that at that

time, the appellant was present in the Police Station; and that in their presence, the appellant confessed that he brought the deceased near the Railway Station, demanded valuables and money and when she refused to give the same, he strangled the deceased, removed M.Os.1 to 3 from her body and pledged the same at Hyderabad. He further deposed that the appellant further informed that he will show the place where he pledged the ornaments if they follow him and that the appellant showed Exs.P-2 to P-4 – the receipts pledging the valuables. That accordingly, both the accused lead them to the place where they allegedly sold the valuables of the deceased. When M.Os.1 to 3 were shown to the witness, he stated that they were the same property, which were recovered by the Police at the instance of the appellant. He admits the signatures on the chits attached to M.Os.1 to 3. Ex.P-11 – seizure panachanama relating to M.O.2 – a pair of silver anklet chains, Ex.P-12 - seizure panchanama relating to M.O.3 - gold ear studs and Ex.P-13 – seizure panchanama relating to M.O.1 – gold Pusthela Tadu, were marked through this witness. In his cross-examination, P.W.13 deposed that he is an illiterate; that he can write his name in Telugu; that he cannot give the time and date when the Police called him to the Police Station; that he does not know the scribe of Ex.P-10 and how many pages it contains; that he put his signatures on more than ten pages; that

his signatures were in Telugu; that he did not sign in English on any paper; that Police took him and others to a shop at Amberpet, Hyderabad; that thereafter, they took them to a shop at E.C.I.L., Hyderabad; and that he does not know the name of the said shop. He denied the suggestion that the appellant did not confess about his committing the offence in their presence. He admitted that the Police did not read over the confessional panchanama to him. He affirmed his signature on Ex.P-10 panchanama and also on M.Os.1 to 3. He denied the suggestion that Ex.P-10 does not bear his signature.

15. A perusal of Ex.P-10 – the alleged confessional statement, shows that apart from the scribe and the Circle Inspector, two other persons have signed it. The signature of B.Bal Reddy – L.W.21 is in Telugu. The other signature is in English. As noted hereinbefore, P.W.13 categorically deposed that he signed on almost ten pages of the confessional panchanama only in Telugu and that he did not sign in English on any paper at all. However, we do not find any such Telugu signature of P.W.13 on Ex.P-10. Thus, the prosecution failed to prove that P.W.13 signed Ex.P-10 though the latter asserted that he signed. Thus, the credibility of the confessional panchanama leading to the alleged recovery is highly doubtful.



As the prosecution had not examined L.W.21 for the reasons best known to it, it failed to prove Ex.P-10.

16. As regards Ex.P-11 to 13, they are seizure panchanamas under which M.Os.2, 3 and 1, respectively, were recovered from P.Ws.8 to 10. We find from Exs.P-11 to P-13 that the signatures thereon in Telugu purportedly belong to P.W.13. P.W.8 deposed that he is the proprietor of Dhanalaxmi Bankers and pawn brokers, Ashoknagar, ECIL, Hyderabad; that he knows the appellant; that on 26.09.2008, the appellant came to his shop and mortgaged M.O.1 – Pusthela Tadu with him; that he paid Rs.20,600/-to the appellant and issued Ex.P-2 slip; that five or six days thereafter, the Police came to his shop along with the appellant whom the witness identified; that on the Police showing Ex.P-2 to him, the witness handed over M.O.1 to the former under a panchanama. He further deposed that the appellant disclosed his name as Raju and pleaded that his son was suffering from ill-health and that therefore, he wanted to mortgage M.O.1. In his cross-examination, P.W.8 deposed that though he had licence to run pawn broker shop, he did not remember its number; that he was in possession of the licence and that he was filing annual statements of his business to M.R.O. He admitted that he did not follow the procedure of taking the application from the appellant before accepting the



mortgage of the gold ornaments; that he maintains original register and that the Police did not seize the same from his shop. He admitted that in Ex.P-2 there are two different writings with different pens. He also admitted that column No.2 does not contain the complete address of the borrower; that Ex.P-2 contains the signatures of the appellant as B.Raju at the place earmarked for the signature of the borrower/pawner. He denied the suggestion that the Police got Ex.P-2 prepared with his assistance and that the borrower Raju is not the appellant who never approached him for mortgaging M.O.1. He also denied the suggestion that M.O.1 is not mortgaged with the witness and that no amount was given by him to the appellant.

17. We find many shortcomings in the evidence of P.W.8. Though he has stated that he knows the appellant, the witness did not explain the reasons for his allowing the appellant to use the name of Raju and sign Ex.P-2 receipt by that name. Though he claims to have licence and maintains original register, he has not produced either of them. It is, therefore, highly doubtful whether P.W.8 was running any pawn broker shop and the appellant mortgaged M.O.1 with him.

18. The depositions of P.Ws.9 and 10, who also allegedly received M.Os.2 and 3, respectively, and advanced money to

the appellant under mortgage by keeping the ornaments under mortgage, also suffer from the same weaknesses as that of P.W.8. No evidence has been produced by the prosecution to show that these witnesses have been actually running the pawn broker business. The gaping hole in the prosecution case on this aspect lies in its failure to prove that the appellant has impersonated his name and signed himself as Raju. When Exs.P-2 to P-4 were admittedly issued in the name of one Raju, the burden lies on the prosecution to plead and prove that it is the appellant, who impersonated himself as Raju, and signed the receipts in that name. No effort, whatsoever, was made by the prosecution in this regard. A look at Ex.P-2 receipt shows that against column No.5 - "Residence with his Particulars of locality Village Taluq & Dist", some door number with some name in Hindi were written. Below the said writings, the following number 9000212076 was written. Going by the number of digits, it is presumable that it pertains to a mobile number. The prosecution has failed to investigate as to the person to whom the said mobile belongs. Had the investigation officer has conducted investigation in this direction, the truth would have come out. The fact, however, remains that this aspect has been completely ignored by the investigation officer.

19. The artificiality of the case of the prosecution is further evident from its theory that the appellant continued to carry the original receipts with him for six days after commission of offence till he was apprehended. It militates against the natural behaviour of any person as the receipts constitute incriminating evidence and no offender would carry such evidence with him.

20. Coming to the identification of M.Os.1 and 2, P.W.5 – the daughter of the deceased, deposed that she can identify her mother's gold and silver ornaments. She described M.O.1 as two rows Pusthela Thadu, M.O.2 as pair of silver anklet chains and M.O.3 as pair of gold ear studs. Nothing could be deciphered from her deposition that M.Os.1 to 3 were shown to her during her giving evidence. In this context, Rule 35 of the Criminal Rules of Practice is apt to be referred to, which reads as under.

“35. Identification of property:-

(1) Identification parades of properties shall be held in the Court the Magistrate where the propwerties are lodges;

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one

after the other and on leaving shall not allowed to communicate with the witness not yet called.”

The above reproduced provision envisaged a specific method of identification of property. The prosecution has given a complete go-bye to this method. As noted supra, there is nothing on record to show that M.Os.1 to 3 were identified by P.W.5 or any other witnesses for that matter, even otherwise than in accordance with Rule 35. Thus, the evidence produced by the prosecution is not sufficient to prove not only recoveries from the appellant but also identification of the ornaments as belonging to the deceased. Even if we believe the last seen theory, in the absence of any other incriminating circumstances including the seizure, recovery and identification of the properties established by the prosecution, it is not possible to sustain conviction of the appellant based only on the last seen theory. The law is well settled that the last seen theory cannot constitute the sole ground for conviction in the absence of other corroborative evidence. (See **Sk. Yusuf vs. State of West Bengal**<sup>1</sup>, **Mohd. Azad alias Samin v. State of West Bengal**<sup>2</sup> and **State thr. Central Bureau of Investigation v. Mahender Singh Dahiya**<sup>3</sup>).

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<sup>1</sup> 2011(11) SCC 754

<sup>2</sup> (2008) 15 SCC 449

<sup>3</sup> (2011) 3 SCC 109

21. In the light of the discussion undertaken above, we are of the opinion that the prosecution has failed to prove the guilt of the appellant beyond all reasonable doubt. The Court below has committed a serious error in accepting the case of the prosecution and convicting the appellant.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1 in the judgment under appeal are set aside. The appellant is acquitted of all the offences with which he was charged. The fine amount, if any, paid by the appellant shall be refunded to him. The appellant shall, accordingly, be set at liberty forthwith if he is not required in any other case(s) or crime(s).

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

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**T.RAJANI, J**

**01<sup>st</sup> October, 2018**

Note: L.R. copies to be marked.

(B/O)  
DR/GHN