

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.531 of 2012

Date: 02.11.2018

Between:

Bandela Rajesh Kumar @ Raja

... Appellant/Accused

And

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

... Respondent/Complainant

COUNSEL FOR APPELLANT: Sri D. Purnachandra Reddy

COUNSEL FOR RESPONDENT: Public Prosecutor

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This appeal arises out of the judgment dated 22.05.2012 passed in S.C.No.615 of 2011 on the file of the VII Additional Sessions Judge, Kakinada, East Godavari District (for short, 'the trial Court').

The brief contents of the charge sheet filed against the appellant/sole accused are that, on 14.08.2010 at 8.00 a.m., PW.2 – Modukuri Prabhavathi asked the deceased Modukuri Surya Kumari to bring a note book and pen, that the deceased went to 3rd Street of Sambamurthy Nagar, Kakinada, that the deceased was last seen with the accused holding her hand and took her towards ESI Hospital compound, PWs.4 to 6 also witnessed the accused taking the deceased with him. As the deceased did not return home, the family members searched for her, that PW.7 noticed the dead body of the deceased in the old and dilapidated quarters in ESI Hospital compound and informed the same to PW.1. Basing on such information, PW.1 and others rushed to the scene of offence and found the deceased girl lying dead, that the blouse worn by the deceased was torn and her cloths were also removed to some extent and that the features of the dead body clearly indicate that she was ravished and later killed. PW.1 gave a report about the occurrence in III Town Law & Order Police Station, Kakinada. On such report, PW-16 - S.I. of Police registered a case in Crime No.72/2010 for the offences punishable under Sections 376 and 302 IPC and took up investigation. During the course of investigation, the Investigation Officer visited the scene of offence and seized the material objects under the cover of observation report and held

inquest over the dead body of the deceased. Thereafter, the Investigation Officer recorded the statements of witnesses and arrested the accused. In pursuance of the confessional statement given by the accused, the police seized the incriminating material and sent the accused for medical examination. PW.12 conducted autopsy over the dead body of the deceased and issued Postmortem Certificate. He also forwarded the material objects to the FSL for its report. After completion of investigation and on receipt of Post Mortem Examination Report and the Report of the Forensic Science Laboratory, the police filed Ex.P.27 - charge sheet for the offences punishable under Sections 302 and 376 IPC against the accused.

The learned Magistrate after completion of all formalities has committed the case to the VII Additional Sessions Judge, Kakinada, East Godavari District. The learned VII Additional Sessions Judge framed charges against the Accused for the offence punishable under Sections 302 and 376 IPC, for which the Accused pleaded not guilty and claimed to be tried.

In order to bring home the guilt of the accused, the prosecution has examined PWs.1 to 18, and got marked the documents under Exs.P.1 to P.31, besides material objects MOs.1 to 18. On behalf of the defence, none were examined and no documents were marked.

The trial Court, on consideration of the oral and documentary evidence available on record, found the accused guilty of the offences punishable under Sections 302 and 376 IPC, and accordingly convicted and sentenced him to suffer imprisonment for life and also to pay a fine of

Rs.200/-, and in default of payment of fine, the accused shall undergo Simple Imprisonment for one month for the offence punishable under Section 302 IPC. The accused was further sentenced to undergo Rigorous Imprisonment for ten years and also to pay a fine of Rs.200/- for the offence under Section 376 IPC, in default of payment of fine, he shall undergo Simple Imprisonment for one month and that both the sentences were directed to run concurrently.

Aggrieved by the said judgment dated 22.05.2012 of the trial Court, the appellant has preferred the present appeal.

Heard the arguments of Sri D. Purnachandra Reddy, learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the respondent-State. Perused the impugned judgment and the material on record.

Learned counsel for the accused contended that there are no direct witnesses to the occurrence and the entire case is based on circumstantial evidence. It is further contended that the trial Court erred in relying upon the evidence of PWs.3 to 5 and 9 for convicting the accused. It also failed to notice that the accused was a stranger to PW.3 and the identification particulars given by her to the police do not match with the physical features of the accused person present in the Court. It is also contended that as per the descriptive particulars of the accused person given by PW.4, the person who was last seen in the company of the deceased was having curly hair, but the accused present in the Court was not having curly hair. It is further contended that the evidence of PW.5 is only hearsay evidence

and the same need not be given any credence. It is contended that the accused also complained to PW.15 that he was shown to the witnesses and his photo was published in the newspapers much prior to the conducting of identification parade. The FSL Report also falsifies the case of the prosecution and that the circumstances relied upon by the prosecution also do not connect the accused with the alleged offence of commission of rape and murder and hence, the accused is entitled for benefit of doubt.

On the other hand, the learned Public Prosecutor appearing for the respondent-State contended that the evidence of witnesses and the documents relied upon by the prosecution would clinchingly prove the guilt of the accused. It is also contended that various circumstances appearing against the accused shows that he alone was responsible for commission of rape and murder of the deceased and hence no interference is called for with the well considered judgment of the trial Court.

The point for determination in this appeal is –

Whether the prosecution proved the guilt of the accused beyond reasonable doubt for the offences punishable under Sections 302 and 376 IPC and whether the trial Court erred in convicting the accused?

This is a case of homicide of one Modukuri Surya Kumari, a Physically Handicapped girl, aged about 15 years, studying 10th Class. The case of the prosecution is based on circumstantial evidence. The accused is alleged to have committed rape and killed the deceased. The prosecution relied on the circumstantial evidence. The main circumstances appearing against the accused are that the accused was last seen in the company of the deceased prior to the incident. The accused was a stranger to the deceased.

The last seen witness is PW.3, who was a Classmate of the deceased. She saw the accused holding the hand of the deceased and going at about 8.30 a.m. in the morning and thereafter at 4.00 p.m., the dead body of the deceased was traced in dilapidated quarters of ESI Hospital compound. The alleged incident occurred on 14.08.2010 after the deceased went to the 3rd Street of Sambamurthy Nagar, Kakinada from the 5th Street, where she was residing, to fetch a Note Book and Pen for her elder sister. As the deceased girl did not return even at 9.00 a.m., the grand-mother of two girls sent the sister of the deceased to find out as to why she did not return. The sister of the deceased-PW.2 went to the shop of PW.6 and enquired about her sister.

In fact, PW.6 – Stationery Shop Keeper did not fully support the case of the prosecution about recognizing the boy with whom the deceased was last seen. However, PW.6 stated that one Physically Handicapped girl came along with her grand-mother to purchase book and pen. He has identified MO.8 as the pen sold by him to the said girl. The evidence of this witness reveals that he was doing the business of Stationery, Books and Xerox at the 3rd Street of Sambamurthy Nagar, Kakinada. The deceased came to his shop to purchase a book and a pen. Though, he stated that she came along with her grand-mother, it is the version of the prosecution that the girl alone went to the shop to purchase the articles of book and pen.

PW.1, the grand-mother of the deceased, sent her elder grand-daughter Prabhavathi to verify about the deceased – Surya Kumari near the Book Shop and on that she returned weeping and reported that her sister was not there. PW.1, her husband and her elder grand-daughter searched

for the deceased. At 4.00 p.m., PW.8, the Councillor – Mr. Venkata Ramana informed that on 14.08.2010 after 3.00 p.m., the Clerk working in ESI Hospital, namely Palika Satyanarayana informed him over telephone that he has noticed the dead body of a female in dilapidated quarters at the Hospital premises. He then went to the said quarters along with the above said person (PW.11) and noticed the dead body and identified her as one of the residents of his Division and informed her grand-mother over phone. PW.1, the grand-mother of the deceased, on receipt of the information, along with her husband and elder grand-daughter went there and noticed the dead body of the deceased – Surya Kumari lying there with no clothes under the knees and with the jacket opened on the chest. Therefore, they went to the Police Station and gave a report – Ex.P.1.

PW.16, the S.I. of Police of III Town Police Station, Kakinada, on receipt of the complaint from PW.1, registered a case in Crime No.72/2010 under Sections 302 and 376 IPC and went to the scene of offence after 7.30 p.m. along with the Inspector of Police.

PW.18, the Inspector of Police, on receipt of phone call from PW.16 regarding occurrence of offence on 14.08.2010 at 7.00 p.m., visited the Police Station at about 7.20 p.m. and went to the scene of offence, which is situated at dilapidated quarters of ESI Hospital. There they found the dead body of the deceased lying. On the next day morning i.e., on 15.08.2010 at 6.30 a.m., he secured the presence of PWs.1, 3 to 6 and 8 and recorded their statements. He conducted observation of the scene of offence and inquest over the dead body of the deceased in the presence of PWs.14 and 11. He got photographed the scene of offence and seized one white button

– MO.9, Reynolds white blue pen, which was present on the floor, and another pen clipped to the jacket of the deceased, which are MOs.8 and 10, respectively, Rold gold ear studs – MO.6, Rold gold black beed chain – MO.11, one pair of blue colour Hawai slippers – MO.7, black colour underwear, black pant – MO.15, blue colour underwear – MO.14, Controlled floor piece – MO.13, blood stained floor piece – MO.12, blue colour piece of langa (Petty coat) – MO.16 and blood stained light blue colour Petty coat – MO.4. He prepared Ex.P.28 – Rough sketch in the presence of the mediators. He forwarded the dead body for Postmortem Examination. He further states that on verification of the crime history of the accused – Bandela Rajesh Kumar @ Raja, it is revealed that two cases were registered against him, which are Crime No.75/2008 under Section 363 IPC, and Crime No.57/1999 under Sections 307 and 323 IPC. He also ascertained that Crime No.107/2010 under Section 498-A IPC was registered in Gopalapuram Police Station of Visakhapatnam District. On receipt of information about the movements of the accused, he went along with the Constables and apprehended the accused in the presence of mediators and recorded Ex.P.26 - Confessional statement of the accused. In pursuance of the confessional statement, the accused led the police to Sukanya Lodge, where the accused has hidden his cloths after committing the offence. Ex.P.19 is the relevant portion of the confessional statement, which led to the discovery of the material object, the cloths of the deceased from Sukanya Lodge. The accused was arrested on the same day on 15.08.2010 at 6.30 p.m. MO.17 is the Pant and MO.18 is the Shirt of the deceased, which were seized under the cover of Mediators Report under Ex.P.19. The Investigation Officer further stated that one button was

missing in MO.18 – Shirt seized from the accused and the button seized from the scene of offence was filled with the space of the shirt where the button was missing. In pursuance of the confession of the accused, he secured the presence of LW.16, the Clerk of Sukanya Lodge, who had shown the Register of the Lodge, marked as Ex.P.20. In the said Register, at page Nos.285 & 286, the accused has written his name as ‘Siva’, which was informed to the Clerk as his name and accordingly the Clerk had written the name of the accused as ‘Siva’.

The prosecution is trying to rely on this evidence to show that the accused, after committing the offence, went to the Lodge and hidden his cloths there, having hired a folding cot by mentioning his name as ‘Siva’ to the Clerk. It is the case of the prosecution that the accused has hired a folding cot in the Lodge by disguising his name and by giving the name of one ‘Siva’ with an intention to commit the alleged offences.

PW.16, S.I. of Police, III Town Police Station, Kakinada, sent the accused for medical examination to find out whether he was potent to commit rape. The Medical Examination Report, Ex.P.11 – Potentiality Certificate reveals that the accused was potent. The Investigation Officer has forwarded the material objects to the Forensic Science Laboratory. On receipt of Postmortem Certificate and FSL Report, except the DNA Report, he filed a Preliminary Charge sheet against the accused. According to him, the investigation reveals that the deceased minor girl was subjected to rape and murdered due to smothering.

The other circumstance relied on by the prosecution is PW.3, a Classmate of the deceased, who noticed the deceased going with a boy in 5th street of Sambamurthy Nagar on 14.08.2010 at 8.30 a.m. Accordingly, she gave identification marks of the said boy and identified him during Test Identification Parade conducted by the learned Magistrate on the requisition of the police, under Ex.P.21 – Memo.

PW.15 was the V Additional JFCM, Kakinada, when the Test Identification Parade was conducted for identification of the accused in Crime No.72/2010 of III Town (Law & Order) Police Station, under Ex.P.21 – Memo. The evidence of the learned Magistrate reveals that PW.3 identified the suspect correctly and accordingly he has drafted the proceedings under Ex.P.22.

The contention of the learned counsel for the accused is that PW.3 has given the descriptive particulars of the accused that he was black in colour and having curly hair, but when it came to the identification of the accused, the accused was not having curly hair and he was of medium complexion. Therefore, it is submitted that the identification of the accused is not matching with the descriptive particulars given by the witness – PW.3 and, therefore, the accused is entitled for benefit of doubt in this case.

The testimony of PW.3 clearly reveals that 14 days after the incident, she was called to the Sub-Jail to identify the accused. She had identified the accused there. No doubt, she stated that she gave the physical features of the accused to the police that the suspect was having curly hair and medium in size and colour, however, she stated in her cross-examination

also that she told the police that the suspect was of black complexion with curly hair, who took the deceased along with him. It is further stated that the accused, in this case, is not having black hair and curly hair. However, this witness denied the suggestion that she identified the accused at the instance of the police at the time of identification parade.

At this juncture, the testimony of PW.15, the learned Magistrate, assumes importance with regard to the conducting of Test Identification Parade for identification of the accused. PW.15 has stated in his cross-examination that the accused stated to him that he was shown to three girls in the Police Station, while he was in the police custody. He has also stated that he did not put any questions to PW.3, whether she had seen the Newspaper publishing the photograph of the accused after the incident along with reporting the news of the incident.

The complaint given by the accused to the learned Magistrate that he was shown to three girls, while he was in police custody, is not supported by any other proof. Therefore, mere statement of the accused that he was shown to three girls cannot straight away be considered to be true without there being any evidence or proof in that regard. Mere statement of the accused given to the learned Magistrate is not believable without there being any other proof. It is also the defence of the accused that the matter was reported in the Newspapers and his photograph was also published after the incident. There is no material placed on record to show that the matter was reported in the Newspapers and the photograph of the accused was published in the Newspapers. Therefore, the said contention also cannot be taken into consideration to discard the evidentiary value of

identification made by PW.3. The discrepancy in the descriptive particulars of the accused given by PW.3 in her testimony with the physical features of the accused person present in the Court during identification parade is only minor in nature and the same does not have any effect on the case of the prosecution to disbelieve the very identification of the accused by the witness PW.3.

The testimony of PW.3 is supported by the testimony of PW.4, who was a resident of the same locality and who also saw the deceased and the accused going together towards ESI Hospital between 8.30 to 8.40 a.m. on the fateful day. According to him, he knows the accused, who is residing at Sambamurthy Nagar, Kakinada. He further stated that the accused is of medium colour and having medium body and curly hair. He further stated in his cross-examination that the accused present before the Court was not having curly hair. According to this witness, the accused was a resident of Sambamurthy Nagar, Kakinada and went to Visakhapatnam. But, the case of the prosecution is that the accused is a resident of Visakhapatnam and he was involved in criminal cases in Kakinada. However, on consideration of the testimony of PW.4, in its entirety, it can be concluded that PW.4 saw the accused going with the deceased girl at the relevant point of time and date.

PW.5, who is also a resident of the same locality, accompanied PW.4 to the Hotel to have tiffin and saw the accused and one girl going towards ESI Hospital Road. He also identified the accused, who is present in the Court as the said person, who saw and heckled at them with his tongue. On the same day, he came to know that one girl died in the ESI Hospital and

on that information, himself and PW.4 went there and noticed the dead body of the deceased.

PW.15 further stated that as per the statement given by the witness, he recorded that the suspect was having curly hair. He could not specifically say, whether the accused/suspect has no curly hair by the date of the proceedings.

The entire case of the prosecution rests mainly on the testimony of PW.3, who is the last seen witness. She saw the accused and the deceased going together on the fateful day on 14.08.2010 at about 8.30 a.m. After 14 days in the Test Identification Parade conducted by the learned Magistrate, she gave identification marks of the suspect wherein she stated that the suspect was having curly hair. It is not known whether the suspect was having curly hair or not by the date of conducting the Test Identification Parade.

PW.4 is a resident of Sambamurthy Nagar, Kakinada. According to him, on the fateful day, from 8.30 to 8.40 a.m., while himself and PW.5 – Arjun went to have tiffin in a Hotel, he noticed one Bandela Raja (accused) taking one girl towards ESI Hospital. This witness identified the accused, who is present in the Court as the said Bandela Raja.

Thus, the testimony of PW.3 is corroborated by the testimony of PWs.4 and 5, who saw the deceased going along with the accused on the fateful day of incident.

The other circumstance appearing against the accused is with regard to the material objects seized from the scene of offence and the material objects recovered at the instance of the accused.

PW.14 is the V.R.O., Kakinada, in whose presence the material objects were seized by the Investigation Officer under the cover of scene of Observation Report - Ex.P.9 and Inquest Report – Ex.P.18.

On consideration of various circumstances appearing against the accused, it is obvious that the accused was alone responsible for commission of rape and murder of the deceased. On the other hand, the accused has not offered any explanation with regard to the recovery of the material objects viz., his pant and shirt in pursuance of his confession and the spermatozoa detected on his pant and about his presence along with the deceased just prior to the commission of offence. As per Ex.P.10 – P.M. Report, the death of the deceased occurred between 24.00 to 30.00 hours prior to the Postmortem Examination. The dead body of the deceased was traced on 14.08.2010 at 4.00 p.m. and the Postmortem Examination was conducted on 15.08.2010. The time of death of the deceased is coinciding with the last seen theory. There is not much time gap between the death of the deceased and her last seen together with the accused. Therefore, the accused has to explain what happened subsequent to the deceased was taken by him towards ESI Hospital. There was no explanation offered by the accused, except stating in his examination under Section 313 Cr.P.C., that as he was involved in another criminal case, the police have implicated him in this case. The said explanation offered by the

accused is not satisfactory to believe his version in the light of identification of his person by PW.3, which is also supported by the other witnesses PWs.4 and 5, who saw him going along with the deceased at the relevant point of time.

From a narration of the sequence of events and various incriminating circumstances appearing against the accused, viz., the deceased is a minor girl, the incident occurring on 14.08.2010 after 8.00 a.m., while the dead body was found at 4.00 p.m. on the same day in dilapidated quarters of ESI Hospital, PW.1, the grand-mother of the deceased reporting the matter to the police at 7.00 p.m., the accused being arrested on 15.08.2010 and he was sent for potency test on 16.08.2010, the evidence of PW.3, who is a classmate of the deceased studying in the same school, who had last seen the accused going with the deceased and her identifying the accused in the Test Identification Parade, though there is a minor discrepancy with regard to the descriptive particulars of the accused given by PW.3 in her testimony with the physical features of the accused person present in the Court, the identification of the accused is proved. The pant and shirt of the accused were recovered in pursuance of his confessional statement and it is admissible under Section 27 of the Indian Evidence Act. Though MO.3 – Pant of the accused contains spermatozoa, there is no explanation offered by the accused with regard to the recovery of his pant and its containing spermatozoa. The potency test of the accused was positive. The shirt button traced from the scene of offence matches with the shirt of the accused seized in pursuance of his confession. There was no explanation offered by him as to how the shirt

button was traced at the scene of offence. The accused has not offered any explanation for going along with the deceased girl and as to what happened thereafter. There is not much time gap between the accused last seen together with the deceased and the occurrence of incident of death of the deceased. PW.3 saw the accused going with the deceased at 8.30 a.m., and the dead body of the deceased was traced at 4.00 p.m. and the Postmortem Examination was conducted nearly 30.00 hours after occurrence of the death of the deceased. The approximate time of last seen theory and the time of death are almost matching with each other. Thus, it is obvious that the prosecution has proved the guilt of the accused beyond reasonable doubt. Therefore, the findings recorded by the trial Court convicting the accused for the offences punishable under Sections 302 and 376 IPC and sentencing him accordingly do not require any interference.

In the result, the appeal is dismissed, confirming the judgment dated 22.05.2012 rendered by the trial Court convicting and sentencing the appellant/accused for the offences punishable under Sections 302 and 376 IPC.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

02.11.2018
Msr

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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(P.D. Judgment prepared by GSP, J)



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