

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

CRIMINAL APPEAL No.622 OF 2011

DATED:26-02-2018

Between:

Veeranki Satyanarayana alias Konda ... Appellant

And

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

COUNSEL FOR THE APPELLANT: Mrs. C. Vasundhara Reddy

COUNSEL FOR THE RESPONDENT: Ms. Shalini Saxena, for
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.202 of 2008 on the file of the XI Additional District and Sessions Judge, Krishna, Gudivada, filed this appeal aggrieved by judgment dt.18.04.2011, whereby he was convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code (IPC), and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, and in default of payment of the fine to undergo simple imprisonment for six months, for the offence under Section 302 IPC; and to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, and in default of payment of the fine to undergo simple imprisonment for two months, for the offence under Section 201 IPC. Both the sentences of imprisonment were directed to run concurrently.

2. The case of the prosecution in brief, as reflected from the charge sheet, is as follows. The appellant/accused and one Rajanala Anjaneyulu (hereinafter referred to as “the deceased”) were close friends. The deceased had lewd and lecherous character and he used to secure prostitutes through the appellant to satisfy his lust by paying money. The deceased, taking advantage of the character of the appellant, used to

abuse him by his caste. The deceased with an intention to have sexual intercourse with the wife of the appellant, used to go to the appellant's house on one pretext or the other and behave with her indecently. One day prior to the incident, the appellant noticed the deceased talking with the wife of the appellant. The appellant felt deep mental agony by suspecting that the deceased was luring his wife and if the deceased is alive he would satisfy his lust with the wife of the appellant and hence he made up his mind to do away the life of the deceased. In pursuance thereof, on 02.09.2007 the appellant induced the deceased that he would bring a college girl from Bhimavaram to have sexual intercourse. The deceased believed the version of the appellant and asked him when he would bring the college girl and the appellant replied that he would bring the college girl on 10.09.2017. On the said date, the appellant with an intention to do away with the life of the deceased, took a "penaka katti", packed in a gunny bag at 10.30 p.m., made a call from his mobile phone No.9963500424 to the mobile phone No.9949225669 of the deceased and informed him that he brought the girl from Bhimavaram and kept her at the fish tanks of Kolli Satyanarayana and Tumu Srinivasa Rao and asked the deceased to come to C.B. Canal Bridge at

Gokinampadu Village. Immediately, the deceased proceeded to Gokinampadu canal bridge on his Yamaha Motor cycle bearing No.AP 16R 2782 and met the appellant. The appellant sat on the backside of the motor cycle and asked the deceased to go to fish tanks of Kolli Satyanarayana and Tumu Srinivasa Rao. While the deceased was driving the motor cycle, on the way, the appellant removed “penaka katti” from the gunny bag, caught hold of the tuft of the hair of the deceased and cut his neck due to which he fell down on the ground, ran away to some extent and died. The appellant with an intention to cause disappearance of the evidence, removed the drawer and lungi of the deceased, put the dead body in the gunny bag and plastic bag, tied with the jute twine and thrown it into the C.B. Canal.

3. On 11.09.2017 at 2.00 p.m. P.W.1 came to know about the dead body of the deceased at C.B. Canal and went to the Mudinepalli Police Station, and presented Ex.P.1 - report to P.W.11 – Sub-Inspector of Police, who registered the same as FIR in Crime No.82 of 2007 under Sections 302 and 201 IPC and submitted the same to the Judicial Magistrate of First Class (JFCM), Kaikaluru, and all the concerned. On receipt of the copy of the express FIR, P.W.14 – Inspector of Police, Gudivada Rural Circle, took up the investigation, examined the

scene of offence, prepared Ex.P.25 - rough sketch of the scene of offence, got drafted Ex.P.17 – scene observation report in the presence of P.W.10 and one Battula Veera Venkata Chiranjeeva Rao (LW.19) and got photographed the scene of offence with P.W.5 – photographer. P.W.14 secured the presence of P.Ws.1 to 10 and eight others, recorded their detailed statements under Section 161 of the Code of Criminal Procedure, 1973 (CrPC) and conducted the inquest over the dead body of the deceased. On 16.09.2007 at 12.00 noon, on reliable information, P.W.14 along with the mediators - P.W.10 and L.W.19 proceeded to Gokinampadu Bus Shelter and arrested the appellant under a cover of mediators' report. In pursuance of information given by the appellant, P.W.14 along with the aforesaid mediators proceeded to C.B. Canal bund at the fish tanks of Tumu Srinivasa Rao and seized the Penaka Katti under the cover of Ex.P.20 – mediators' report. The appellant was produced before the Court of JFCM, Gudivada, on 16.09.2007. On requisition from the Superintendent of Police, Krishna District, Attluri Bhanu Prasad (L.W.17), the Arear Manager, Airtel Cell Phone Services, Vijayawada, issued call lists of Cell Phone Nos.9963500424 and 9949225669 used by the appellant and the deceased respectively. Dr. G. Ravi

Kumar - Medical Officer, C.A.S. Government Hospital, Gudivada (L.W.21) conducted the post-mortem examination on the dead body of the deceased and he opined that the deceased died due to 'Haemorrhagic shock due to lacerated cut injury on the neck', The Magistrate recorded the statements of P.Ws.3, 6 and 7 under Section 164 CrPC. P.W.14 accordingly filed the charge sheet.

4. Based on the charge sheet, the Court below has framed the following charges.

"Firstly:- That you, Veeranki Satyanarayana @ Konda, on the 10th day of September 2007 at about 10.30 p.m. in the night at C.B. canal bund near Gokinampadu Bridge in Gokinampadu village, did commit murder by intentionally (or knowingly) causing the death of the deceased by name Rajanala Anjaneyulu by cutting his neck with the help of penaka kathi, in connection with the developing intimacy by the deceased with your wife and suspecting that the deceased may lure your wife for lust, and that you thereby committed an offence punishable U/s.302 IPC and within the cognizance of Court of Session.

Secondly & lastly:- That you, on the aforesaid date, time and place of the offence as noted in Charge No.1, knowing (or having reason to believe) that certain offence, to wit murder of the deceased punishable with death or life imprisonment has been committed, did cause certain evidence of the said offence to disappear, to wit removed the drawer, lungi of the deceased and put the dead body in gunny bag, tied with jute twine thread and thrown into the C.B. canal, with the intention of screening the said offence from legal punishment, and that you thereby committed an offence punishable U/s.201 IPC and within the cognizance of Court of Session."

5. As the plea of the appellant was one of denial, he was subjected to trial during which the prosecution examined

P.Ws.1 to 14, got Exs.P.1 to P.27 marked and produced M.Os.1 to 8. On behalf of the defence, Exs.D.1 to D.8 were marked. On consideration of the oral and documentary evidence, the Court below has convicted the appellant in the manner as noted hereinbefore.

6. Smt. C. Vasundhara Reddy, learned counsel for the appellant, submitted that the Court below has convicted the appellant merely based on suspicion without there being clear proof of his involvement. She further submitted that the whole case of the prosecution is too artificial to be believed to convict the appellant. She referred to the omissions extracted from the evidence of P.Ws.1, 3, 6, 7 and 14. She also termed the alleged recovery of M.O.7 as a make believe affair.

7. Opposing the above submissions, Ms. Shalini Saxena, representing the learned Public Prosecutor (AP) sought to sustain the judgment of the lower Court.

8. We have carefully considered the respective submissions of the counsel for the parties with reference to the record. This is a case based on circumstantial evidence. The prosecution mainly relied upon the last seen theory, call data and the recovery of M.O.7 – knife. In a case based on circumstantial evidence, motive plays an important role. In the charge sheet

filed by the Police, it was alleged that the deceased has a lewd and lecherous character and used to secure prostitutes through the appellant to satisfy his lust by paying the money and that taking advantage of the position of the appellant the deceased used to abuse him by his caste. The prosecution further alleged that the deceased, with an intention to have sexual intercourse with the wife of the appellant, used to go to the latter's house on one pretext or the other and indecently behave with her. That one day prior to the incident, the appellant noticed that the deceased was talking to his wife; he felt deep mental agony by suspecting that the deceased was luring his wife for lust and that if the deceased is alive he will lure his wife to satisfy his lust and therefore the appellant made up his mind to do away with the life of the deceased.

9. P.W.1, father of the deceased, in his evidence merely stated that he opined that the appellant killed the deceased on suspicion that the latter was having illicit intimacy with the wife of the former. He has not spoken anything about the deceased being a womanizer. The only other witness who made a faint reference of the deceased being womanizer is P.W.4, who is the nephew of P.W.1. Except a cryptic statement that the deceased was a womanizer, no further details thereof were furnished.

No witness, other than P.W.1 even referred to the alleged attempt of the deceased to develop illicit intimacy with the wife of the appellant. Therefore, the prosecution miserably failed to prove the motive for the appellant to kill the deceased.

10. As regards the crucial links on which the prosecution tried to place reliance, the evidence of P.Ws.3, 6 and 7 assumes relevance. P.W.3 is a farm servant of the deceased. He has stated that on 10.09.2007 at about 7.00 p.m. the deceased came to his prawns tank and brought meals along with him, and that himself and the deceased took the dinner and went near the tank to provide feed to the prawns. That as the charge of the battery in the mobile phone of the deceased got exhausted, he took the mobile phone of P.W.3; put his sim card in the mobile phone and that just after the change of the sim card, the deceased received the phone call from the appellant at about 10.30 p.m. That the deceased informed the witness about his receiving the phone call from the appellant and the deceased left the place on his motor cycle, by saying that he was going to meet the appellant and would return within one hour and that subsequently the deceased did not return. He further deposed that on the next day morning at about 6.00 a.m., P.W.1, the father of the deceased, came to him and enquired about the

deceased, and P.W.3 informed that the deceased left the prawns tank at about 10.30 p.m. on the ground that he received a phone call from the appellant. The veracity of this testimony of P.W.3 becomes highly doubtful, if we read the contents of Ex.P.1 – Police report, given by P.W.1. In his report, P.W.1 stated that he was informed by P.W.3 that at around 10.30 p.m. when the deceased received a phone call, he left the prawns tank informing P.W.3 that he will come back within one hour. In Ex.P.1, P.W.1 stated that his son was killed by somebody deliberately. If the fact that the deceased has gone to meet the appellant on the latter making a phone call was made known to P.W.1 by P.W.3, as deposed by him, P.W.1 would have named the appellant and expressed his suspicion in Ex.P.1 itself. In order to cover up this lacuna, P.W.1 has denied the suggestion that he did not refer to the name of the appellant in Ex.P.1. He further added that he informed the scribe of Ex.P.1 that he was having suspicion over the appellant. However, P.W.10, the scribe of Ex.P.1, categorically stated that P.W.1 did not state in Ex.P.1 that he had any suspicion over the appellant and that he might have killed his son. He also admitted that it is not sated in Ex.P.1 that the deceased has received a phone call from the appellant during that night and no mention was made in Ex.P.1

that P.W.3 informed P.W.1 that the deceased informed him that he was going to meet the appellant. These admissions by P.W.10 fully expose the falsity of the stand taken by P.W.1 in his evidence. P.W.3 in his evidence stated that at 6.00 a.m. on 11.9.2017 P.W.1 has come to him and enquired about the deceased and that he informed P.W.1 that the deceased left the prawns tank at about 10.30 p.m. by informing P.W.3 that the deceased received a phone call from the appellant. Failure of P.W.1 to refer this fact in Ex.P.1 casts a serious doubt on the truthfulness of this statement of P.W.3.

11. As regards P.W.6, he has testified that on 10.9.2007 during the night at about 11.00 p.m. or 11.30 p.m. while he was returning to his house from his prawns tank after switching on the motor for running fans in the tank for supply of oxygen to prawns, he has found the deceased and the appellant coming in opposite direction on a motor cycle near Gokinampadu bridge and that after crossing the bridge they proceeded towards left side canal bund, leading towards the prawns tanks of Kolli Satyanarayana and Toomu Srinu. He further stated that the deceased was riding the motor cycle, while the appellant was the pillion rider and they were also taking a folded gunny bag which was found in the hands of the appellant. He further

deposed that when he saw the dead body lying in the canal, the body was covered with the gunny bag which he identified as the one carried by the appellant on the previous night while going on the motor cycle. In the cross-examination he has sated that he went to the place where the dead body was lying at about 11.00 a.m. and by that time P.W.1, father of the deceased, and his son-in-law were present and that he was present at the dead body for fifteen minutes. He further stated that he did not inform P.W.1 or his son-in-law or any other person present at the dead body that he saw the deceased and the appellant going on motor cycle at Gokinampadu bridge. The conduct and behaviour of P.W.6 are highly artificial, in that, if he had seen the deceased in the company of the appellant, he would not have failed to inform the same to P.W.1 or his son-in-law at least when he met them near the dead body, the following morning. This itself would create any amount of cloud on the veracity of the evidence of this witness. As regards P.W.7, his evidence is of no use to the prosecution case because he did not see the appellant in the company of the deceased and on the contrary he was stated to have seen him alone with wet shorts. On a careful consideration of the evidence of P.Ws.1,

3, and 6 we have no hesitation to hold that the prosecution has failed to prove the last seen theory propounded by it.

12. With respect to the call data, P.W.8, in whose name the mobile phone with the number of '9963500424' stood, did not support the case of the prosecution, as per which, P.W.8 is a friend of the appellant and he has taken the mobile connection with the aforesaid number in his name and given it to the appellant. P.W.8 categorically denied any friendship with the appellant or his giving the sim card to him. Even otherwise, as the very case of the prosecution is that the appellant and the deceased were bosom friends, mere contact on phone by the two with each other before the death of the deceased would not lead to any inference that the appellant might have killed the deceased.

13. As regards the recovery of M.O.7 - knife, the prosecution case is too incredible to be believed. In Ex.P.20 – seizure mediators' report it is stated that the appellant has led the police to the canal where the dead body was recovered, got into the canal and after search for about half-an-hour he took out a knife informing that with that knife he killed the deceased between 10.30 p.m. and 11.00 p.m. on 10.9.2007. As per Ex.P.27 – Forensic Science Laboratory report conclusion,

blood was found on the knife. However, as regards the mobile allegedly used by the deceased, and thrown in the canal by the appellant, in Ex.P.20 the appellant stated that he is not able to find the same as it might have been washed away because of heavy flow of water in the canal. The improbability of this theory is evident from the fact that if the mobile phone has got washed away in the heavy flow of water in the canal, it is not possible to believe that the knife would have remained in the canal resisting the heavy flow of water. From this, coupled with the fact that the knife was recovered in a place which is accessible to public, it cannot be said that it was recovered from the exclusive possession of the appellant and therefore no credence could be given to the alleged recovery of the knife.

14. The defence was also able to elicit crucial omission from P.W.6 that he did not state before the Police that he saw the appellant and the deceased coming in opposite direction on a motor cycle. Moreover, the graphic description by P.W.6 of the gunny bag found folded in the hands of the appellant and being carried on by him, and his further testimony that he was able to identify that the same bag was found on the body of the deceased, raises any amount of suspicion about the credibility of his testimony. P.W.6 allegedly noticed the appellant carrying

a folded gunny bag in the dead of the night on a motor cycle and has connected the same gunny bag with the one which was found on the body of the deceased. It is humanly not possible for any person to identify and confirm that the bag on the body of the deceased was the same bag which was being carried in a folded condition by the appellant on the previous night.

15. For the aforementioned reasons, we are of the opinion that the conviction of the appellant is based merely on suspicion rather than on proof and hence the same is not sustainable. Hence, the impugned judgment of the lower court is reversed and the appellant is acquitted of the charges framed against him.

16. The Criminal Appeal is accordingly allowed. The conviction and sentences recorded against the appellant under the impugned judgment are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime, and the fine amount, if any, paid by him shall be refunded to him.

A perusal of the record shows that by order dt.22.11.2016 this Court has granted bail to the appellant, following the order of this Court in **Batchu Ranga Rao v. State of A.P.**¹, as he has served more than five years of the sentence. Therefore, the

¹ 2016 (3) ALT (CrI.) 505 (DB)(AP)

appellant shall surrender himself before the Superintendent, Central Jail, Rajamahendravaram, for completion of the legal formalities for his release from the Jail. The bail bonds furnished by the appellant shall stand cancelled.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

26-2-2018

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