

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

CRIMINAL APPEAL No.911 of 2011

23.07.2018

Between:

Manthena Seetharama Raju

..Appellant/sole accused

and

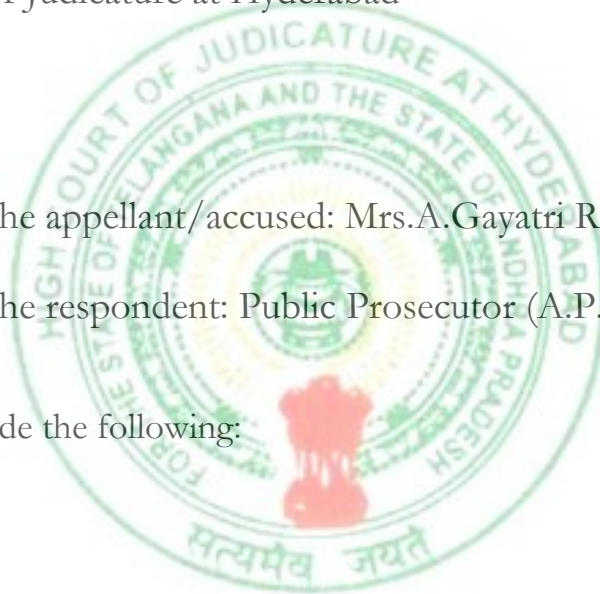
The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant/accused: Mrs.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (A.P.)

The Court made the following:



JUDGMENT:

The appellant, who is the sole accused in Sessions Case No.350 of 2010 on the file of learned VI Additional District and Sessions Judge, (Fast Track Court), Guntur, filed this appeal feeling aggrieved by judgment, dated 05.05.2011, whereby he was convicted for the offence punishable under Section 302 I.P.C. and was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months.

2. The case of the prosecution as set out in the charge sheet is stated, briefly, as under.

(a) That the accused was the resident of Khajipalem Village of Pittalavanipalem Mandal at the time of occurrence; that he was a very notorious person and habituated to consume alcohol and used to torture people in drunken state and that therefore, his wife and children discarded him. That one Smt. Kappala Sree Lakshmi (hereinafter referred to as 'the deceased') was the wife of P.W.2; that their marriage took place about twenty (20) years ago and that they had no children. That P.W.1 is the elder sister of the deceased; that since P.W.1 was discarded by her husband, she joined the family of her sister –

the deceased and her husband – P.W.2 and subsequently, she too married P.W.2 and thereafter, the deceased was neglected by her husband - P.W.2. That one week prior to the date of occurrence, the deceased joined as a servant in the house of the accused and that sometimes, she used to stay in the house of the accused during nights also.

(b) While so, on 10.08.2009, since the deceased, who went to the house of the accused for work, did not return till late night, her husband – P.W.2 and her elder sister – P.W.1, went to the house of the accused at about 12.00 hours in the night and noticed quarrel between the accused and the deceased and during the quarrel, the accused was beating the deceased on her head with the iron handle of an axe and was hacking her with the axe on her head, with an intention to kill her. That afraid of the situation, P.Ws.1 and 2 ran away from the scene of offence i.e., the house of the accused and brought P.W.3 and L.Ws.4 and 5 - Donthireddi Polireddy and Kappala Venkateswarareddy, respectively, to that place, but, as they could not find the accused and the deceased there, they returned to their house thinking that the deceased might have escaped from the accused. That on the next day i.e., 11.08.2009, at about 10.00 a.m., when P.Ws.1 and 2 were proceeding to the

house of the accused, they noticed the dead body of the deceased in thorny bushes with injuries on her head and P.W.1 lodged a report with the Police.

(c) On receipt of the complaint, P.W.6 - the Sub-Inspector (S.I.) of Police, Tsondole Police Station (P.S.), registered a case in Crime No.35 of 2009 for the offence punishable under Section 302 I.P.C., and P.W.7 - the Inspector of Police, Bapatla, took up investigation. During the course of investigation, P.W.7 visited the scene of offence, got photographed the scene of offence, prepared a rough sketch of the scene of offence - Ex.P-11 and scene observation report - Ex.P-2, seized blood stained and control earth in the presence of P.W.4 and L.W.7 - the Village Revenue Officer and the Village Servant of Khajipalem Village, respectively, held inquest over the dead body of the deceased in the presence of P.W.4 and L.W.7 and thereafter, sent the dead body to the Government Area Hospital, Bapatla, for autopsy and recorded the statements of P.Ws.1 to 3 and L.Ws.4 and 5. P.W.5 - the Deputy Civil Surgeon, Government Area Hospital, Bapatla, who conducted autopsy on the dead body of the deceased, preserved certain items for Forensic Science Laboratory (F.S.L.) examination and reserved opinion pending receipt of F.S.L.

report. On 24.08.2009, P.W.7 arrested the accused near Reddi Palem Center, Tsondole, in the presence of P.W.4 and L.W.7 under the cover of *mahaẓar nama* and the accused confessed the offence. P.W.7 recorded confessional statement of the accused and at the instance of the latter, he recovered the axe used in the commission of the offence from the thorny bushes in the presence of the mediators under a separate *mahaẓar nama* attested by P.W.4 and L.W.7 and sent the accused for remand. After completion of the investigation, P.W.7 filed charge sheet against the accused for the offence punishable under Section 302 I.P.C.

3. Based on the charge sheet and the material collected during the investigation, the Court below has framed the following charge.

“That you on 10th Day of August, 2009 at about 12 mid night, at your house within the limits of Tsondole Police Station, did committed the murder of one Kappala Srilakshmi i.e., the deceased by intentionally causing her death by hacking her with an axe on her head and beat on her head with iron handle of the axe and thereby you committed the offence punishable under Section 302 I.P.C. and within my cognizance.

And I hereby direct that you be tried on the above said charge.”

4. As the plea of the accused was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 8, got Exs.P-1 to P-11 marked and produced M.Os. 1 to 5. On behalf of the accused, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

5. We have heard Mrs.A.Gayathri Reddy, learned counsel for the appellant/accused, and the learned Public Prosecutor for the State of (A.P.) appearing for the respondent-State.

6. At the outset, it needs to be noted that the case of the prosecution is mainly based on the evidence of P.Ws.1 and 2 and Ex.P-5 – seizure report. We shall, therefore, consider this part of evidence.

(a) P.W.2 is none other than the husband of the deceased and P.W.1 is her sister apart from being the second wife of P.W.2. In Ex.P-1 – Police report, P.W.1 stated that the deceased was none other than her younger sister and the wife of P.W.2; that as the deceased did not beget children, P.W.2 married her also; that since one week prior to the date of occurrence, the deceased was working as domestic helper in the

house of the accused; that the wife and children of the accused were not staying with him; that on the previous day i.e., 10.08.2009 at evening about 6.00 p.m., the deceased went to the house of the accused for doing work; that the deceased, sometimes, used to sleep in the house of the accused during nights; that during night of 10.08.2009, at 12.00 hours, she along with P.W.2 went to the house of the accused to bring home the deceased; that when they reached near the house of the accused, they saw the former and the deceased quarrelling in front of the former's house; that suddenly, the accused took out an iron rod and beat the deceased indiscriminately on her head; that out of fear, she and P.W.2 ran away from there and thereafter, they informed their people and came back to the house of the accused and found that the accused and the deceased were not there and that they thought that the deceased might have escaped. P.W.1 further stated that on the following day i.e., 11.08.2009 at 10.00 a.m., when they were passing on the road, they found the dead body of the deceased with serious injuries on her head, in bushes. P.W.1 alleged that the accused killed the deceased by beating her and threw her body in the bushes and that the accused was a very cruel person and used to beat people as he liked. She, accordingly, requested for action against the accused for killing the deceased.

(b) In her evidence, P.W.1 deposed that as the deceased did not return home from the house of the accused till 9.00 or 10.00 p.m., she and P.W.2 went to the house of the accused at 10.00 or 11.00 p.m. and by that time, the accused and the deceased were quarrelling with each other as the accused was trying to commit rape on her. She further deposed that the accused beat the deceased on her head with iron rod; that as she and P.W.2 were afraid, they fled away and informed the same to P.W.3 and L.Ws.4 and 5; that all of them went to the house of the accused and by that time, the deceased and accused were not found in the house of the accused and then, they searched for them on that day and also on the next day; that on the next day, she was informed by the villagers that the dead body of the deceased was found in the bushes near the house of the accused and that meanwhile, the Police came, recorded her statement and obtained her thumb impression.

(c) In her cross-examination, the witness deposed that she and P.W.2 went to the house of the accused at about 9.30 p.m.; that there are residential houses near the house of the accused; that on seeing the accused quarrelling with the deceased, P.W.1 raised alarm, but P.W.2 asked her not to cry as her health was not well. She further deposed that they saw the

accused quarrelling with the deceased from a distance of 60 feet; that no neighbours came outside from their houses by that time and that there was a street light nearby the house of the accused. She denied the suggestion that she did not witness the accused quarrelling with the deceased and did not see M.O.5 in the hands of the accused. The witness further deposed that the accused beat the deceased on the backside of her head with iron rod.

7. If we closely analyse the evidence of P.W.1 with reference to Ex.P-1 - report, we find many contradictions and embellishments. In Ex.P-1, P.W.1 did not state that when they went to the house of the accused, the latter was trying to commit rape on the deceased. She only stated that they went to the house of the accused about 12 in the midnight. In her chief-examination, she deposed that they went to the house of the accused at 10.00 or 11.00 p.m. In her cross-examination, she deposed that she went to the house of the accused at about 9.30 p.m. The most unnatural part of the version of P.W.1 lies in the fact that neither she nor P.W.2 tried to intervene when the accused was quarrelling and beating the deceased. Interestingly, in her cross-examination, P.W.1 deposed that she and P.W.2 watched the quarrel from a distance of 60 feet.

The further incredulous part of her testimony was that when she was about to raise alarm, P.W.2 stopped her from doing so on the ground that it may spoil her health. In the ordinary course of events, when the wife of a person is being physically attacked, the human instinct would not prompt him to stand away from the attack without even attempting to intervene. At least, when P.W.1, who is no other than the sister of the deceased, tried to raise alarm, a person in place of P.W.2 would not prevent her by showing concern for her health, leaving the victim under attack to her fate.

(a) As noted hereinbefore, in her cross-examination, P.W.1 deposed that she and P.W.2 witnessed the quarrel from a distance of about 60 feet. P.Ws.1 and 2 did not even attempt to go near the scene of offence and try to pacify both the parties. If a quarrel as described by P.Ws.1 and 2 really took place in front of the house of the accused, which was admittedly surrounded by the houses of the neighbours, it is not possible to believe that none of the neighbours would come out of their houses on hearing the quarrel though it was night. The atmosphere in the villages during nights being silent, even a small alarm would disturb the sleep of the neighbours. The fact that no neighbour witnessed the incident

also raises a serious doubt about the truth in the version of P.Ws.1 and 2.

(b) The further incongruity in the evidence of P.Ws. 1 and 2 could be seen from the fact that according to them, they went to P.W.3 and informed him about the incident and came back to the house of the accused, where they did not find both the accused and the deceased. P.W.3 in his evidence deposed that he was informed by P.Ws.1 and 2 about the incident taking place at the house of the accused at about 10.30 or 11.00 p.m. and that then, he along with P.Ws.1 and 2 and L.Ws.4 and 5 went to the house of the accused at about 12.30 midnight. If P.Ws.1 and 2 witnessed the attack on the deceased, it passes one apprehension as to what they were doing after informing P.W.3 till 12.30 p.m. The prosecution has not come out with any explanation for this huge time gap. The artificiality in the evidence of these witnesses could be perceived from the fact that none of the witnesses tried to inform the Police though the Police Station is about 8 kilometers from the house of the accused. P.W.6 – the S.I. of Police, deposed that on 11.08.2018 at 1.00 p.m. while he was at the P.S., P.W.1 came there and presented Ex.P-1 report. The version of P.W.1 is otherwise. In her chief-examination,

she deposed that after they found the dead body of the deceased in the bushes, the Police came there and recorded her statement, which is Ex.P-1 report. There is, thus, a serious discrepancy between the evidence of P.W.1 and P.W.6 as to the place and manner in which the report was given.

8. The evidence of P.W.2 need not be separately discussed as he deposed on the same lines as P.W.1 did and for the same reasons which are mentioned while analysing the evidence of P.W.1 would equally apply to the evidence of P.W.2 for rejecting his testimony as wholly incredible. The prosecution has failed to examine any neighbour and for the reasons best known to it, they have given up L.Ws.4 and 5, who allegedly accompanied P.Ws.1 to 3 to the house of the accused during the night of occurrence. Their evidence would have thrown proper light on the case.

9. As regards the weapon allegedly used by the accused, P.Ws.1 and 2 deposed that the accused beat the deceased with iron rod. However, the prosecution produced M.O.5 – axe with iron handle. As noted above, in Ex.P-1, P.W.1 stated that she saw the accused attacking the deceased on her head with iron rod, indiscriminately. However, in Ex.P-6 – the post-mortem report only two injuries were found on the head

of the deceased. The said report also shows swollen vagina and anal canal appearing through anus, which clearly suggests brutal rape of the deceased before she was done to death. However, the Investigation Officer has not investigated the case from this angle at all.

10. Coming to the alleged recovery of M.O.5 - axe, P.W.7 in his evidence categorically admitted that he did not obtain the signatures of the mediators on identity slips to affix on M.O.5, that Ex.P-5 – seizure report also does not disclose the name of its scribe and that he did not take any steps to take finger prints of the accused to send the same to F.S.L. along with M.O.5 for the purpose of comparison. The prosecution failed to examine the alleged mediators to Ex.P-5 – seizure report. Therefore, the Court cannot rely upon mere *ipse dixit* of P.W.7 to believe the recovery. One other defect in the investigation is the failure of the Police to send M.O.5 to F.S.L. when it is written in Ex.P-5 that M.O.5 had blood stains. This failure may be on account of either of the two reasons *viz.*, either the observations in Ex.P-5 may be false or there is rank negligence on the part of the Police in not sending M.O.5 to F.S.L for analysis to know as to whether the blood on M.O.5 belonged to the deceased or not. Ignoring all the material shortcomings,

serious contradictions and inherent unnaturalities in the testimonies of the prosecution witnesses as discussed above, the Court below has erroneously held the accused guilty of commission of the offence punishable under Section 302 I.P.C. and sentenced him as noted hereinbefore.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/sole accused in judgment, dated 05.05.2011, in Sessions Case No.350 of 2010 on the file of learned VI Additional District and Sessions Judge, (Fast Track Court), Guntur, for the offence punishable under Section 302 I.P.C. are set aside. The appellant is acquitted of the offence with which he was charged. The fine amount, if any, paid by him shall be refunded to him. The Jail Superintendent, Central Jail, Rajamahendravaram, shall complete all the legal formalities for the immediate release of the appellant, if he is not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

23rd July, 2018
GHN