

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

Cr1.A.No.891 of 2011

Between:

Pathlavath Devamma,
W/o Pathlavath Chinna Balaya

... Appellant

And

The State of Telangana, repto.,
by the Public Prosecutor, Hyderabad.

... Respondent

JUDGMENT PRONOUNCED ON 04.6.2018

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

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

Crl.A.No.891 of 2011

% 04.6.2018

Between:

Pathlavath Devamma,
W/o Pathlavath Chinna Balaya

..... Appellant

And:

\$ The State of Telangana, repled.,
by the Public Prosecutor, Hyderabad.

.....Respondent

< Gist:

> Head Note:

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

^ Counsel for the Respondent: Mr. C.Pratap Reddy

Public Prosecutor for the State of Telangana

? Cases Referred:

1. 1994 Supp (2) SCC 372
2. (2003) 3 SCC 353
3. (2005) 3 SCC 114
4. (2012) 6 SCC 403

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

Crl.A.No.891 of 2011

Date:04.06.2018

Between.

Pathlavath Devamma,
W/o Pathlavath Chinna Balaya

.....Appellant

And.

The State of Telangana, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mrs. A.Gayatri Reddy

Counsel for the respondent: Mr. C.Pratap Reddy,

Public Prosecutor for the State of Telangana

The Court made the following:

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

The sole accused in Sessions Case No.811 of 2007 on the file of the learned I Additional Sessions Judge, Mahabubnagar filed this Criminal Appeal feeling aggrieved by her conviction for the offence under Section-302 IPC and sentencing her to suffer rigorous imprisonment for life apart from imposition of fine of Rs.1,000/- and in default, to suffer simple imprisonment for one month, *vide* judgment, dated 27.07.2011.

The case of the prosecution in brief is as follows:

P.W-1 is the first wife and the appellant is the second wife of the deceased. That on 21.4.2007 at 8 am, P.W-1 lodged a complaint at Mahabubnagar Rural Police Station stating that her marriage with the deceased was performed about 25 years back; that she begot two daughters from the wedlock; that as she had no male issues, a second marriage between the deceased and the appellant was performed about 14 years back, but the appellant remained issueless; that the appellant's father and the elder brother used to quarrel with the deceased demanding him to give half of 6 acres of land to her; that finally, they hatched a plan to do away the life of the deceased; that accordingly, on 20.4.2007 at about 7 pm, the appellant brought one liquor bottle and forcibly made the deceased to consume it; that on the same night, at about 8.30 pm, the deceased and the appellant went to the thrashing yard in order to guard paddy; that on next

day morning, as her son-in-law has prepared to go to his village, her younger daughter went to the fields to call the deceased, who returned crying; that on enquiry, she disclosed that the neck of the deceased was chopped and he was in a pool of blood; and that they rushed to the spot and found cut injury on the throat and injuries of an axe on the head and neck of the deceased. On receipt of the said complaint, a case in Crime No.103 of 2007 was registered for the offence under Section 302 IPC and express F.I.Rs were sent to all the officers concerned.

PW-16-Circle Inspector of Police, Mahabubnagar Rural Police Station took up the investigation of the case, visited the scene of offence situated at the agricultural fields of the deceased at Kodur sivar, conducted panchanama in the presence of the mediators-PWs.8 and 9, prepared a rough sketch of the scene of offence, seized the blood stained earth, control earth and one axe used in the commission of offence by the appellant under the cover of panchanama, got the dead body of the deceased photographed by L.W-10-Kiran Goud, examined and recorded the statements of P.Ws.4 and 5 and held inquest over the dead body of the deceased in the presence of P.Ws.10 and 17 and sent the body of the deceased for post-mortem examination. Subsequently, P.W-15-Sub-Inspector of Police, Mahabubnagar Rural Police Station examined and recorded the statements of

PWs.6 and 7 and L.W-9-Sabavath Chandramma and L.W-10-Kiran Goud. That the appellant visited the house of P.W-6 and made extra-judicial confession that she killed the deceased in the agricultural fields for harassing her and not giving half of six acres of land to her. PW-14-dcotor, who conducted autopsy over the dead body of the deceased opined that the cause of death was due to injuries to vital organs like brain and both carotid alkies leading to haemorrhage and shock and death. That on 04.5.2007, at 6.30 pm., PW-15 arrested the appellant and on interrogation, in the presence of PW-11 and LW-16-Chimanti Ramchandraiah, she confessed to have murdered the deceased by inflicting injuries with an axe.

Based on the charge sheet and the material collected by the Investigation Officer, the Court framed the following charge:

“That on 20.4.2007 at about 10 pm., at your agricultural field in Kodur thanda, you did commit murder intentionally or knowingly causing the death of your husband Pathlavath Chinna Balya Naik by chopping his neck with an axe and inflicting injuries on the head and that you thereby, committed the offence punishable under Section-302 IPC and within my cognizance.”

As the plea of the appellant was one of denial, she was subjected to trial, during which, the prosecution has examined P.Ws.1 to 18, got Exs.P-1 to P-16 marked and produced M.Os.1 to 9. On behalf of the defence, no oral evidence was let in, but

Ex.D-1-Copy of proceedings of the Tahsildar and Ex.D-2-Copy of settlement document, dated 26.3.2008, executed by P.W-2 were got marked.

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

We have heard Mrs. A.Gayatri Reddy, learned counsel for the appellant, and Mr. C.Pratap Reddy, learned Public Prosecutor for the State of Telangana.

This is a case based on circumstantial evidence. Therefore, motive plays a crucial role in this case. The only reason attributed to the appellant to develop grudge against the deceased, her own husband, was that her apprehension that the deceased may not settle any property in her favour as, she did not bear children. In our opinion, this alleged motive sounds very unnatural for, even if the deceased is done to death, the appellant may not automatically succeed to his estate as, there is every possibility and risk of her being convicted and sentenced to imprisonment, more so, when the deceased had a living first wife along with two children. We are, therefore, of the opinion that the motive set up by the prosecution is too weak to be given any credibility.

As regards the evidence produced by the prosecution, the Court below has mainly relied upon the last seen theory spoken

to by P.W-1. Indeed, through the suggestions given to P.W-1 and the explanation offered by the appellant in her Section-313 Cr.P.C. examination, she has set up the plea that the appellant was not living with the deceased for some time prior to the murder of the deceased and that she was living with her brother in a different place *i.e.*, at Mahabubnagar. This plea derives its support from the evidence of P.W-4, who testified that as per his information, about six months prior to the murder of the deceased, the appellant had left the latter's house and started living at her brother's house at Mahabubnagar. The Court below does not appear to have given much attention to this plea of the defence.

As regards the probability of the appellant killing the deceased on her own, it is the case of the prosecution that the appellant had purchased a liquor bottle and forcibly made the deceased to drink it before accompanying him to the thrashing floor, where they slept together during the night when the murder has taken place. Ex.P-10-Post-mortem examination report does not reveal that the viscera of the deceased was examined so as to know whether alcohol contents were present. The Post-mortem report only shows the presence of digested food in the stomach contents, without there being any reference to alcohol contents. Column No.6 of Ex.P-10-Post-mortem examination report described the physique of the deceased as

‘well-built’. Even as per the evidence of P.W-1, the first wife of the deceased, the latter was physically strong. It is, therefore, not possible to believe that the appellant being a woman would have been able to overpower the deceased, who, apparently, was not in a drunken condition, and cause his death. Ex.P-10-Post-mortem examination report reveals as many as nine injuries, most of which were caused on the head and neck part of the deceased with a sharp weapon. In our considered opinion, it is not possible for the appellant alone to cause such extensive injuries to a well-built and able bodied person like the deceased, who, as stated above, appeared to be in normal condition without consuming alcohol.

The further improbability of the appellant alone causing injuries to the deceased is evident from the nature of injuries described by P.W-14-the doctor, who conducted autopsy over the dead body of the deceased. In his cross-examination, P.W-14 stated that injury No.4 is possible with a stick. Even as per the prosecution version, MOs.1 and 2-an axe and a stick respectively were recovered from the scene of offence. Assuming that the appellant has participated in the attack, it is not possible to believe that she used both axe and stick for causing injuries to the deceased. It is, therefore, reasonable to presume that more than one person has participated in the attack of the deceased and it logically follows that the prosecution has not come out

with true version as to the persons who participated in the attack of the deceased and the manner in which such attack has taken place.

As regards the alleged recovery, admittedly, except MO-3-saree, which allegedly contained blood stains, nothing was recovered from the possession of the appellant. As per Ex.P-13-Forensic Science Laboratory Report, MO-3-Saree did not contain any blood stains. Therefore, recovery of MO-3-saree from the possession of the appellant has no legal consequences at all and the Court below has also rightly declined to place any reliance on such recovery.

As for the last seen theory, as discussed above, it comes under the cloud of doubt in the face of the defence of the appellant that for about six months prior to the murder of the deceased, she was living with her brother at Mahabubnagar, which was supported by the statement of P.W.4. Even otherwise, the law is well settled that the Court cannot base its conviction only based on the last seen theory in the absence of any other independent evidence corroborating the version of the prosecution in order to find the accused guilty of the offence.

In **Arjun Marik v. State of Bihar**¹ the Supreme Court held as under:

“31.... it is settled law that the only circumstance of last seen will not complete the chain of circumstances

¹ 1994 Supp (2) SCC 372

to record [a] finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction, on that basis alone, can be founded.”

In **State of Karnataka v. M.V. Mahesh**², the Supreme Court held:

“3. ... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court.”

In **State of U.P. v. Satish**³, the Supreme Court held:

“Where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

Upon review of the case law, the Supreme Court in **Sahadevan v. State of Tamil Nadu**⁴ held:

“32. Undoubtedly, the last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”

² (2003) 3 SCC 353

³ (2005) 3 SCC 114

⁴ (2012) 6 SCC 403

On the analysis of the evidence undertaken hereinbefore, undoubtedly the prosecution has failed to adduce any other corroborative evidence to support the last seen theory. Hence, we are of the opinion that the prosecution failed to prove the guilt of the appellant beyond all reasonable doubt and the Court below has wrongly convicted the appellant for the offence punishable under Section-302 IPC.

Accordingly, the judgment, dated 27.07.2011, in Sessions Case No.811 of 2007 on the file of the I Additional Sessions Judge, Mahabubnagar is set aside. The appellant is acquitted of the charge under Section-302 IPC and her bail bonds shall stand cancelled. Since the appellant is on bail, she must immediately surrender herself before the Superintendent, Cherlopalle Central Jail for completion of formalities for her release. The fine amount paid by the appellant shall be refunded to her.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

04th June, 2018

Note:

LR copies to be marked.

B/o

DR