

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

CRIMINAL APPEAL No.45 of 2012

JUDGMENT: (Per Hon'ble Sri Justice T.Sunil Chowdary)

This Criminal Appeal is preferred by the sole accused under Section 374(2) Cr.P.C., challenging the judgment dated 09.5.2011 passed in S.C.No.26 of 2008 on the file of the Family Court-cum-Additional District and Sessions Court, Medak at Sangareddy, wherein and whereby the appellant was found guilty of the offence punishable under Section 302 of IPC, convicted and sentenced him to undergo imprisonment for life. However, the appellant was found not guilty of the offence under Section 201 of IPC; consequently he was acquitted of the said offence.

2. The facts, which are relevant for disposal of this appeal, in nutshell, are as follows:

One Vadepally Lingam (hereinafter referred to as, the accused) is the husband of Smt.Lakshmi (hereinafter referred to as, the deceased) and they belong to Bhanoor Village of Medak District. The accused borrowed money from the Villagers and left the village in the year 2006 as he could not repay the debts and came back to the Village in the first week of March, 2007. A petty quarrel took place between the accused and the deceased two days prior to the incident, which was pacified by the mother and sister of the deceased-P.Ws.2 and 3 respectively. On 04.3.2007, as instructed by the accused, his son-Anjaneyulu-P.W.1 purchased four toddy bottles and handed over them to the accused. The accused mixed some poison in the toddy and gave it to the deceased, after consuming the same the deceased had convulsions

for some time and fell unconscious. On the advice of Durgam Pentaiah-Registered Medical Practitioner-P.W.4, the deceased was taken to Shankarpally Hospital and from there to Government Hospital, Sangareddy wherein she died. P.W.1 submitted a complaint-Ex.P.1 to the Station House Officer, BDL Bhanur Police Station-P.W.14, who in turn registered a case in Crime No.25 of 2007 under Section 174 Cr.P.C., and issued the First Information Report-Ex.P.11. P.W.14 observed the scene of offence and prepared scene of offence report-Ex.P.12 and rough sketch of scene of offence-Ex.P.13. He also seized M.Os.1, 2 and 4 at the scene of offence in the presence of the mediators-P.Ws.10 and 12 under the cover of Panchanama-Ex.P.14. The Inspector of Police, Patancheru Circle (P.W.16) conducted inquest over the dead body of the deceased in the presence of Panch witnesses-P.Ws.8 and 9 and prepared Inquest panchanama-Ex.P.15 and sent the dead body for post-mortem examination. Dr.J.D.Sathish Kumar, basing on the requisition issued by P.W.16, conducted autopsy over the dead body of the deceased and issued post-mortem examination report-Ex.P.18. P.W.16 seized the receipt-Ex.P.2 from the custody of the accused in the presence of the mediators-P.Ws.11 and 13. Ex.P.19 is the report issued by the Forensic Science Laboratory, Hyderabad and Ex.P.20 is the final opinion. Dr.Sheshidhar was examined as P.W.15 to identify the signature of Dr.J.D.Sathish Kumar, who conducted autopsy over the dead body of the deceased and issued Ex.P.18 post-mortem examination report. The Inspector of Police, Patancheru-P.W.17 seized bill book-Ex.P.3 from the shop of P.W.5. Basing on the statements of P.Ws.3 and 4

recorded under Section 161 Cr.P.C., P.W.14 filed alteration memo-Ex.P.16 on the file of the Additional Judicial Magistrate of First Class, Sangareddy for alteration of section of law to Sections 302 and 201 of IPC. After completion of the investigation, P.W.17 laid the charge sheet against the accused for the offences under Sections 302 and 201 of IPC.

3. The learned Additional Judicial Magistrate of First Class, Sangareddy has taken the cognizance of offence under Sections 302 and 201 of IPC and numbered the charge sheet as PRC No.119 of 2007. The learned Magistrate has supplied the copies of all the documents to the accused as contemplated under Section 207 of Cr.P.C., and committed the case to the District and Sessions Division, Medak at Sangareddy, under Section 209 of Cr.P.C, as the offence under Section 302 of IPC is exclusively triable by a Court of Session. The learned District and Sessions Judge, Medak at Sangareddy has taken the case on file for the offences under Sections 302 and 201 of IPC and numbered it as S.C.No.26 of 2008 and made over the same to the Family Court-cum-Additional District and Sessions Court, Medak at Sangareddy, for trial and disposal in accordance with law.

4. The learned Additional District Judge, after hearing both sides, framed the charges under Sections 302 and 201 of IPC, read over and explained to the accused in Telugu for which he denied the charges and claimed to be tried. To prove the guilt of the accused, on behalf of the Prosecution, P.Ws.1 to 17 were examined and Exs.P.1 to P.20 and M.Os.1 to 4 were marked. After completion of the prosecution evidence, the accused was examined

under Section 313 of Cr.P.C., with reference to the incriminating material deposed against him for which he denied the same. On behalf of the defence, no oral evidence was adduced but Ex.D.1 was marked.

5. After having thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the accused was found guilty for the offence under Section 302 of IPC, convicted and sentenced him to undergo life imprisonment. Aggrieved by the conviction and sentence imposed against him, the sole accused preferred the present appeal.

6. Heard the learned counsel for the appellant-accused and Additional Public Prosecutor representing the State.

7. The learned counsel for the appellant-accused strenuously submitted that the trial Court failed to consider the improvements much less material improvements made by P.W.1 in his testimony. The finding of the trial Court that Ex.P.2 receipt was recovered from the accused in the presence of P.Ws.11 and 13 is not sustainable under law. The trial Court lost sight of the corrections made in Ex.P.3 bill book even though the same were admitted by P.Ws.3 and 17. The trial Court failed to consider that almost all the independent witnesses-P.Ws.6, 7, 8, 10 and 12 did not support the case of prosecution; in such circumstances, the accused is entitled for acquittal of the offence under Section 302 of IPC; consequently, the conviction and sentence imposed against him is liable to be set aside. **Per contra**, learned Additional Public

Prosecutor submitted that the testimony of P.W.1 is cogent and convincing in all material aspects; therefore, there are no grounds much less valid grounds to discard his testimony. The oral testimony of P.W.4 clinchingly established that P.W.16 seized M.O.3 endosulfan tin from him in the presence of P.Ws.10 and 12. He further submitted that the prosecution has established the guilt of the accused for the offence under Section 302 of IPC beyond all reasonable doubt; therefore, there are no grounds much less valid grounds to interfere with the well considered judgment of the trial Court.

8. In the light of the rival contentions, the points that arose for consideration in this appeal are:

1. Whether the prosecution has proved the guilt of the accused for the offence under Section 302 of IPC beyond all reasonable doubt? and
2. Whether the conviction and sentence imposed against the accused is sustainable or not?

Points

9. Both the points are interlinked with each other; hence, we are inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

10. As per the prosecution version, P.W.1 set the criminal law in motion. The testimony of P.W.1 reveals that he lodged Ex.P1-complaint with P.W.14-the Station House Officer, BDL Bhanur Police Station. The testimony of P.W.14 reveals that basing on Ex.P.1 complaint lodged by P.W.1 he registered a case in Crime No.25 of 2007 under Section 174 Cr.P.C., and issued Ex.P.11-First

Information Report. The learned counsel for the appellant strenuously submitted that there is a discrepancy with regard to the place of lodging of the complaint. In the cross-examination, P.W.1 stated that he lodged the complaint at Government Hospital, Sangareddy. As per the testimony of P.W.14, P.W.1 came to the Police Station and lodged Ex.P.1 complaint. The Court has to take into consideration the purpose for which the witness was examined and the discrepancy, if any, in his testimony goes to the very root of the prosecution case. The very purpose of lodging of complaint is to set the criminal law in motion. It is not in dispute that P.W.1 lodged Ex.P.1 complaint to P.W.14-the Station House Officer, BDL Bhanur Police Station. Taking into consideration the facts and circumstances of the case, we are of considered view that P.W.1 set the criminal law in motion.

11. The testimony of P.Ws.1, 2 and 3 reveals that the deceased died in Government Hospital, Sangareddy. The testimony of P.W.16-Inspector of Police, Patancheru Circle reveals that he conducted inquest over the dead body of the deceased and prepared Ex.P15 Inquest panchanama. As per the recitals of Ex.P.15-Inquest panchanama, the deceased died due to consumption of endosulfan. As seen from the testimony of P.W.15, Dr.J.D.Sathith Kumar conducted autopsy over the dead body of the deceased and issued Ex.P.18 post-mortem examination report. As per the recitals of Ex.P.18, the deceased died due to consumption of endosulfan. The accused is also not disputing the factum and nature of death of the deceased. By examining P.Ws.1, 2, 3, 8, 9, 15 and 16 and marking Exs.P.15 and P.18, the

prosecution clearly established that the death of the deceased was homicide.

12. As per the prosecution version, the alleged offence took place in the house of the accused and the deceased. As seen from the testimony of P.W.1, his mother and father consumed toddy in their house. As per the testimony of P.W.14, he visited the house of the accused and the deceased and prepared Ex.P.12-scene of offence and Ex.P.13-rough sketch. His testimony further reveals that he seized M.Os.1, 2 and 4 from the house of the accused and the deceased under Ex.P.15-seizure panchanama. As seen from the testimony of P.W.4, he has seen the deceased in unconscious state and advised P.W.1 to take her to Hospital at Sangareddy. By examining P.Ws.1, 4 and 14 and marking Exs.P.12, 13 and 15, the prosecution established the scene of offence.

13. In order to bring home the guilt of the accused, the prosecution has to establish (1) the motive on the part of the accused; (2) the accused purchased M.O.3 endosulfan tin from the shop of P.W.5 under Ex.P.2 receipt; (3) seizure of M.O.3 from the possession of P.W.4, and (4) the accused mixed endosulfan poison in the toddy and made the deceased to consume the same.

14. According to the prosecution, motive for the alleged offence is that the deceased developed illicit intimacy with one of the Villagers. There is no whisper in the testimony of P.W.1 that the deceased developed intimacy with one of the villagers, which is said to be the root cause for the incident. The testimony of P.W.2 is silent as to the accused picking up quarrel with the deceased

two days prior to the incident due to her illicit intimacy with one of the villagers. During the course of investigation, P.W.3-mother of the deceased stated that the accused picked up quarrel with the deceased suspecting her fidelity. The said portion in Section 161 Cr.P.C., statement of P.W.3 was marked as Ex.D.1. In the cross-examination, P.W.3 denied the suggestion that she stated to the Police as in Ex.D1. P.Ws.1 to 3 are competent witnesses to speak about the family affairs of the accused and the deceased. There is no whisper in the testimony of these witnesses that the accused bore grudge against the deceased due to her character and attitude. The testimony of these three witnesses is no way helpful to the prosecution to prove the motive for the alleged offence. The prosecution failed to prove the motive.

15. As per the prosecution version, the accused purchased endosulfan tin from the shop of P.W.5. As seen from the testimony of P.W.5, the accused purchased M.O.3 from his shop as per Ex.P.3 bill book. His testimony further reveals that in his absence, Ex.P.3 bill book was seized by the Police from his shop. Serial number of Ex.P.2 receipt is 4271. As per Ex.P.3-bill book, the serial number starts with '5'. P.Ws.5 and 17 in unequivocal terms deposed that the first digit of all receipts in Ex.P.3 bill book is corrected as '4' in the place of '5'. In view of number of corrections in Ex.P.3 bill book, much weight cannot be attached to it. Apart from this, the Ex.P.3 bill book was seized nearly twenty-three days after the alleged seizure of Ex.P.2 receipt. As per the testimony of P.W.16, he seized Ex.P.2 receipt from the possession of accused on 12.3.2007 in the presence of P.Ws.11 and 13. In the cross-

examination, P.Ws.11 and 13 in unequivocal terms deposed that the accused was in Police custody for a period of seven or eight days prior to the alleged seizure of Ex.P.2 receipt. If the testimony of P.Ws.11 and 13 is taken into consideration, the accused was in Police custody for about a week prior to the alleged seizure of Ex.P.2 receipt. P.Ws.11 and 13 did not fully support the case of the prosecution. If really the accused was in possession of Ex.P.2 receipt what prevented the Investigating Officer to secure the mediators and seize Ex.P.2 receipt from the accused at the earliest point of time. The testimony of P.Ws.11 and 13 casts a cloud on the version putforth by the prosecution with regard to the seizure of Ex.P2 receipt from the possession of the accused. Viewed from any angle, no credence can be attached to Ex.P.2 receipt. Once Exs.P.2 and P3 are discarded, there is no material on record to establish that the accused purchased endosulfan from the shop of P.W.5 under Ex.P.2 receipt prior to 04.3.2007. In view of the above discussion, we are of the considered view that the prosecution failed to establish that the appellant purchased M.O.3 endosulfan tin from the shop of P.W.5 under Ex.P2 receipt.

16. According to the prosecution, P.W.4-Registered Medical Practitioner has taken M.O.3 endosulfan tin from the scene of offence; thereafter the Police seized the same from him in the presence of P.Ws.10 and 12. For one reason or the other, P.Ws.10 and 12 did not support the case of the prosecution. These two witnesses turned hostile. Hence, their testimony is no way helpful to the prosecution. As per the testimony of P.W.14, he seized M.O.3 from the possession of P.W.4 in the Police Station and

prepared Ex.P.15 seizure panchanama. The testimony of P.Ws.4 and 14 is not corroborating with each other with regard to exact place of seizure of M.O.3. We are very much conscious that the Court cannot place much reliance on trivial discrepancies. At the same time, the Court shall not lose sight of the material discrepancies. P.Ws.4 and 14 stated two different versions with regard to the place of seizure of M.O.3, which is a material discrepancy, apart from failure on the part of the prosecution to put forth the reasons much less cogent and valid reasons why P.W.4 retained M.O.3 with him from 05.3.2007 to 09.3.2007. In view of inconsistency in the testimony of P.Ws.4 and 14, we are of the considered view that the prosecution failed to establish seizure of M.O.3 from the possession of P.W.4.

17. The edifice of the prosecution case is that the accused mixed the poison in the toddy and made the deceased to consume the same, which eventually lead to her death. In order to prove this aspect, the prosecution placed much reliance on P.W.1, who is none other than the son of the accused and the deceased. It is needless to say that the F.I.R. is not an encyclopedia to mention each and every minute detail. However, the complainant shall mention the vitals aspects in the F.I.R. The record reveals that the section of law was altered from Section 174 Cr.P.C., to Sections 302 and 201 IPC basing on the statements of P.Ws.3 and 4, who are not eye witnesses to the incident. As per the recitals of Ex.A.1 F.I.R., P.W.1 suspected involvement of his father in the commission of the offence. The suspicious however strong shall not dispense with the legal proof. If the recitals of Ex.P.1 are taken

into consideration, P.W.1 did not see the mixing of poison in the toddy by the accused. As per the testimony of P.W.1 he purchased four toddy bottles and handed over the same to the accused. But P.W.14 seized two toddy bottles i.e., M.Os.1 and 2. If really P.W.1 purchased four toddy bottles what happened to the remaining two bottles is not properly explained by the prosecution. At one stage, P.W.1 deposed that he handed over the toddy bottles to his father and left the house. At another stage, he stated that he had peeped through door when the accused mixing the poison in the toddy. There is no whisper in the testimony of P.W.1 that he has seen his mother consuming the toddy. There is no consistency in the testimony of P.W.1 with regard to the mixing of poison by the accused in the toddy. P.W.1 has given different versions at different stages. P.W.1 made several improvements at the time of recording of his evidence. In the cross-examination, P.W.1 deposed that he developed grudge against his father as he used to beat him. When there is animosity between the accused and the prosecution witness the Court has to meticulously scrutinize the testimony of such witness so as to exclude the exaggerations and the possibility of false implication. In order to ascertain the truthfulness or otherwise of the testimony of P.W.1, it is apposite to consider the testimony of P.W.15.

18. Dr.J.D.Sathish Kumar, who conducted autopsy on the dead body of the deceased, is no more; therefore, P.W.15 was examined. P.W.15 identified the signature of Dr.J.D.Sathish Kumar on Exs.P.18-post mortem examination report. In the cross-examination, P.W.15 in categorically deposed that there is no

mention in Ex.P.18-Post mortem examination report that the deceased consumed toddy. He further deposed that there is no mention in Ex.P.19-R.F.S.L. report and Ex.P.20-final report that the deceased consumed toddy. If the deceased consumed the poison certainly the same might have been reflected in Exs.P.18, P.19 and P.20. The oral testimony of P.W.15 coupled with Ex.P.18, P.19 and P.20 clearly reveals that the deceased did not consume the toddy on the date of the incident. In the light of the testimony of P.W.15 and the recitals of Exs.P.18, P.19 and P.20, the testimony of P.W.1 that he had seen the accused while mixing the poison in the toddy on the date of incident is unbelievable and improbable. As observed earlier, there are number of improvements in the testimony of P.W.1. The testimony of P.W.1 does not inspire the confidence of the Court. Once the testimony of P.W.1 is discarded, nothing will remain on the record to connect the accused with the offence. The trial Court has not considered various material aspects and placed reliance on the testimony of P.W.1 to base conviction.

19. In the light of the foregoing discussion, we have no hesitation to hold that the prosecution failed to prove the guilt of the appellant-accused for the offence under Section 302 IPC; hence, he is entitled for acquittal.

20. In the result, the appeal is allowed setting aside the conviction and sentence imposed against the appellant-accused for the offence under Section 302 IPC in S.C.No.26 of 2008 on the file of the Family Court-cum-Additional District and Sessions Judge, Medak at Sangareddy, and he is acquitted of the said offence.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

21. A perusal of the record reveals that the accused was granted bail by this Court on 21.3.2017 in CrI.A.M.P.No.457 of 2017. It appears that the accused is on bail. Therefore, the accused is directed to report before the Superintendent, Central Prison, Cherlapalli, within one month from today. On such report, the jail authorities are hereby directed to release the accused forthwith, if his presence is not required in any other case. Bail bonds of the accused shall stand cancelled automatically.



SRI M.S. RAMACHANDRA RAO, J.

SRI T. SUNIL CHOWDARY, J.

Date: 07.4.2018
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