

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

Crl.A.No.1026 of 2011

Date : 23-7-2018

Between:

Nyalapalli Balakishan

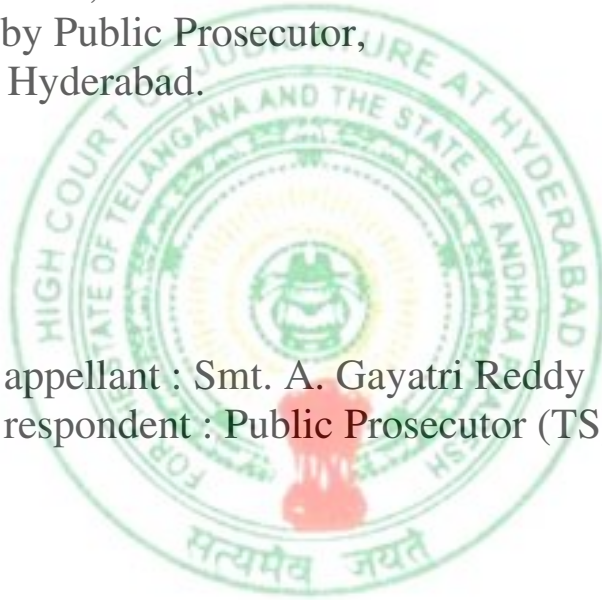
..Appellant

And

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

.. Respondent

Counsel for appellant : Smt. A. Gayatri Reddy
Counsel for respondent : Public Prosecutor (TS)



The Court made the following :

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

The sole accused in S.C.No.285 of 2009 on the file of the learned VI Additional District & Sessions Judge, Medak at Siddipet, filed this appeal assailing his conviction for the offence punishable under Section 302 IPC and sentencing him to undergo to life imprisonment and also to pay a fine of Rs.5000/-, in default of payment of fine, to suffer simple imprisonment for one year.

The case of the prosecution as set-out in the charge sheet is briefly stated hereunder :

The accused is a native of Siddipet and he migrated to Gajwel and eking his livelihood by doing Rexene work since three years. That Kandela Pochamma w/o. Pochaiah (hereinafter referred to as "the deceased") used to give hand loans on interest, that the accused used to take loan from LW-10, the daughter of the deceased and return the same with interest and that as LW-10 went to her in-law's house at West Godavari District, the accused used to take loans from the deceased on interest, that about one month prior to the death of the deceased, the accused asked her for a loan of Rs.30,000/- for extension of his shop but the deceased refused to give the loan, that the

accused visited the deceased for loan for one week but the deceased refused him the loan and as such the accused, having suffered loss in his Rexene shop, bore grudge against the deceased and hatched a plan to killed the deceased with a broken bottle.

That on 8-4-2009 at about 19.00 Hours, PW-1, the son of the deceased, lodged Ex.P-1 complaint stating that on 7-4-2009 at 3 p.m. the deceased left her house and did not return, that on 8-4-2009 at about 5 p.m. he came to know that in the outskirts of Pregnapur village, nearby Haritha Restaurant, some unknown persons have murdered an unknown lady. That on receipt of the said information, PW-1 and his wife visited the spot and identified the deceased lady as his mother. That PW-1 further stated in the complaint that the deceased used to lend money on interest basis, that his sister-in-law – PW-2 and his sister – PW-3 informed him that on 7-3-2009 at 3 p.m. the accused took the deceased along with him, that the accused was harassing the deceased since a week for loan and that he suspected that the accused might have murdered the deceased as she did not give money to the accused.

That the Sub-Inspector of Police, Gajwel – LW-20, registered the complaint given by PW-1 as Cr.No.91/2009 under Section 302 IPC, issued express FIRs to all the concerned, took up the investigation and during the course of investigation, he thoroughly examined and recorded the statements of PW-1. That on receipt of the express FIR, PW-12 – the Circle Inspector of Police, Gajwel, took up the investigation, visited the scene of offence and observed the same minutely in the presence of the mediators PW-7 and LW-12, got the scene of offence photographed with the help of the Police photographer, prepared Ex.P-2 - scene of offence panchanama and Ex.P-3 – rough sketch of the scene of offence, recorded the statements of LW-2, PW-3, LW-4 to LW-7 and PW-5 under Section 161 Cr.P.C. That PW-12 conducted inquest over the dead body of the deceased in the presence of PW-8, LW-15 and LW-16 and sent the dead body to the Government Community Health Centre, Gajwel for autopsy. PW-11 – Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased and opined that the deceased died of cardio-respiratory arrest due to multiple injuries. The blood stained clothes of the deceased

were seized and sent to Forensic Science Laboratory for analysis and report.

That on 10-4-2009, PW-12 visited the toddy shop of PW-6, examined her and recorded her statement. That on 27-4-2009 at 08.30 Hours, PW-9 produced the accused before PW-12 and stated that the accused made a confession that on 7-4-2009 at about 7 p.m. he murdered the deceased behind Harita Restaurant, in the outskirts of Pregnapur village as the deceased did not give him loan. That PW-12 recorded the extra-judicial confession of the accused in the presence of PW-10 and LW-18 to the effect that as the deceased did not give him the loan of Rs.30,000/- for extension of his Rexene shop due to which he suffered loss, on 7-4-2009 at about 3 p.m., he went to the house of the deceased, took her to a toddy shop at Pedched road, Gajwel where both of them consumed two bottles of toddy each, that later he took the deceased to agriculture fields behind Harita Restaurant in the outskirts of Pregnapur and again made her consume liquor, that he again asked the deceased for loan which she refused, that both of them quarrelled in that regard and he killed the deceased by stabbing her with a broken liquor bottle

on her left side of throat. That after completion of the investigation, PW-12 filed the charge sheet.

Based on the charge sheet and the evidence collected during the course of investigation, the trial Court framed the following charge against the accused :

“That you accused used to take money from the deceased Kandela Pochamma as loan and used to repay the same with interest. About one month prior to the incident you the accused have requested deceased Pochavva to lend a sum of Rs.30,000/- for the purpose of extension of your Rexene shop. Though you the accused rambled around the house of the deceased for loan the deceased refused to lend money to you and you have incurred loss in your Rexene business and you the accused bore grudge against the deceased and hatched up a plan to do away with the life of the deceased. In pursuance of your plan on 07.04.2009 at about 3 PM you the accused went to the house of the deceased Kandela Pochamma and took her to a toddy shop situated at Pidched road and consumed two bottles of toddy. From there at about 7 PM on the same day i.e., on 07.04.2009 you the accused took the deceased Pochamma who is in intoxicated condition to the agricultural fields situate behind the Haritha restaurant located in the outskirts of the Pregnapur village and again you the accused made her to consume a quarter bottle cheap liquor which was being carried by you and asked the deceased for loan for which she refused and you the accused quarrelled with her and stabbed her with a broken piece of liquor bottle on her left side of throat and killed her and thereby you the accused have committed an offence punishable under Section 302 IPC and within my cognizance.”

The accused denied the charge and stood the trial. In support of its case, the prosecution examined PW-1 to PW-12, got Exs.P-1 to P-10 marked and produced MO-1 to MO-7. On behalf of the

defence, no one was examined. On appreciation of the oral and documentary evidence, the lower Court has disposed of the case in the manner as noted hereinbefore.

We have heard Smt. A. Gayathri Reddy, learned counsel for the appellant and the learned Public Prosecutor for the State of Telangana.

This is a case based on circumstantial evidence where motive plays a vital role. The case of the prosecution in this regard is that as the deceased refused to lend Rs.30,000/- to the appellant, he developed grudge against the former and killed her. Except the ipsi dixit of PW-1 and PW-2, who are the daughter and daughter-in-law of the deceased, respectively, no specific evidence is let in to support the case of the prosecution. Ordinarily, it is not possible to believe that refusal to lend money would lead to the accused bearing grudge to such an extent as to kill the deceased. Therefore, the case of the prosecution cannot thrive on such a weak motive.

The prosecution mainly relied on the evidence of PW-2, PW-3, PW-6 and PW-9. PW-2, PW-3 and PW-6 are stated to be witnesses who had last seen the accused and the deceased together. PW-1 is the daughter and PW-2 is the daughter-in-law

of the deceased. In her evidence, PW-2 deposed that on the date of the incident at about 3.00 p.m., the appellant came to the house of the deceased, had a talk with her and took her towards Pragnapur side and that as she did not return during that night, they searched for the deceased on the next day morning. In the cross-examination, PW-2 admitted that she did not hear the conversation between the deceased and the accused and that the accused did not inform her as to where they were going. She admitted that she did not state before the Police that the accused and the deceased were going towards Pragnapur.

PW-3, the daughter of the deceased, deposed that on the date of the incident at about 3.00 p.m. the accused came to the house of the deceased; that at that time herself, her father and PW-2 and the deceased were present in the hut of the deceased, that the accused and the deceased went aside and talked with each other and that a few minutes thereafter, the accused took the deceased to toddy shop in Gajwel town. It is significant to note that though the husband of the deceased was stated to be present in the house when the accused and the deceased went together, he was not examined by the prosecution. In our opinion, he is a material witness to speak about the said fact.

Be that as it may, there is a contradiction between the stands of PW-2 and PW-3 as regards the place to which the deceased and the accused went. While PW-2 stated that she has seen them going towards Pragnapur, PW-3 stated that they went towards toddy shop in Gajwel town.

PW-6 is the owner of the toddy shop in Gajwel town. She stated that about 1½ years back at about 3 p.m. the accused who was present in court and a woman aged about 60 years came to her shop, that the said woman has purchased two bottles of toddy, that the accused and the said woman sat and consumed the two bottles of toddy and went away and that on the next day he came to know that the said woman died near Pragnapur. PW-11, the Doctor who conducted autopsy, deposed in his evidence that he has not noticed the smell of alcohol in the stomach contents and that he also did not find the contents of toddy or any other liquor in the stomach of the deceased. In Ex.P-5 – post mortem examination report, the Doctor opined that the death might have taken place between 24 to 48 hours prior to the post-mortem examination, which was commenced at 11.30 A.M. on 9-4-2009. If the deceased had consumed toddy at 3.00 p.m. as spoken to by PW-6, her viscera would have contained

the remains of the toddy. Moreover, PW-6 did not claim that she knew the deceased. Thus, the deceased was a stranger to her. That is the obvious reason why she deposed that he saw the accused along with a woman. Therefore, based on the evidence of PW-6, it cannot be presumed that the woman who consumed toddy along with the accused, was only the deceased, more so when the stomach contents of the deceased did not contain any toddy.

The law is well settled that the last seen theory cannot constitute the sole basis for conviction, more particularly, when the accused was not seen in the company of the deceased at all either at or near the scene of offence. It has come out in the evidence that distance between the toddy shop and the Pragnapur where the dead body was found is about 3 K.Ms. Even if we accept the evidence of PW-2 and PW-3 to the extent of the accused taking the deceased with him, in the absence of the prosecution proving the exact time of death, it is not possible to presume that it is only the accused who might have caused the death of the deceased. The last seen theory could be accepted only if there is no possibility of any third person intruding between the accused and the deceased. To establish the last seen

theory, there must be a close proximity between the time at which the accused was last seen in the company of the deceased and the time of death (**See: S.K. Yusuf Vs. State of West Bengal¹, Shyamal Ghosh Vs. State of West Bengal², Satpal Vs. State of Haryana³**). In the instant case, such proximity does not exist.

The last piece of evidence is the alleged extra-judicial confession spoken to by PW-9. In his evidence, PW-9 stated that the day after the incident, the accused came to his house and requested him to compromise with the relatives of the deceased and sought his help and that on his informing the S.I. of Police, Gajwel, he came to the witness's house and took the accused to the Police Station. In his cross-examination, PW-9 stated that the accused is neither his friend nor a relative but he is having facial acquaintance with him. Contrary to the version of PW-9 that the S.I. of Police has taken away the accused with him on the day following the incident, the accused was shown to have been arrested on 27-4-2009 which was almost 19 days thereafter. The extra-judicial confession being a very weak piece of

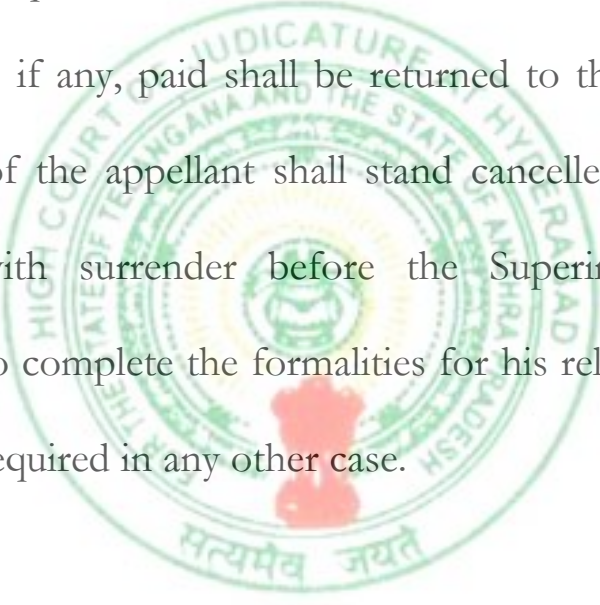
¹ 2011(11) SCC 754

² 2012(7) SCC 646

³ 2018(6) SCC 610

evidence, in the face of the above mentioned unexplained incongruity, the evidence of PW-9 cannot be believed. No other evidence could be produced by the prosecution to connect the accused to the alleged offence. The court below however has wrongly convicted the appellant.

For the aforementioned reasons, the Judgment of the trial Court is not sustainable and the same is accordingly set aside. The appellant is acquitted of the offence which he is charged with. The fine amount, if any, paid shall be returned to the appellant. The bail bonds of the appellant shall stand cancelled. The appellant shall forthwith surrender before the Superintendent of Jail, Cherlapalli to complete the formalities for his release from the jail, if he is not required in any other case.



Justice C.V. Nagarjuna Reddy

Justice Gudiseva Shyam Prasad

Date : 23-7-2018

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