

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.631 of 2011

Date: 28.02.2018

Between:

Gummala China Pullaiah
S/o.Chinna Ankanna, 32 years,
Mason worker, N/o.Racherla (v) & (m)
r/o.Mohiddinpuram (v),
Ardhaveedu (M)

...

Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

...

Respondent

Counsel for the Appellant : Smt.C.Vasundhara Reddy

Counsel for the Respondent : 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.414 of 2010 on the file of the VI Additional District and Sessions Judge (FTC), Markapur (for short 'the Court below'), has filed the present Criminal Appeal. By Judgment, dated 07-06-2011, passed therein, the Court below has found the appellant guilty of the offences punishable under Sections 302 and 201 I.P.C. and sentenced him to undergo (i) Life Imprisonment and also to pay a fine of Rs.3,000/-, in default, to undergo Simple Imprisonment for a period of four months for the offence under Section 302 I.P.C. and (ii) Rigorous Imprisonment for a period of three years and also to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for a period of two months for the offence u/s. 201 I.P.C.

The case of the prosecution, as stated in the charge sheet, is as under:

The appellant married Gummalla Lakshmi (hereinafter referred to as 'the deceased') about thirteen years prior to the incident and they begot two children. Subsequently, the appellant started harassing the deceased physically and mentally by suspecting her fidelity and also necked her out of

the house twice or thrice. That when the same was complained, PW-4- uncle of the deceased and PW.13- a village elder held panchayat for about four times and advised the appellant not to harass the deceased, but the appellant paid deaf ear to their words and continued harassing the deceased. That on 27.07.2008 at about 8.00 a.m., the appellant picked up a quarrel with the deceased and kicked her with leg and the same was witnessed by PW.9- their son. That the appellant decided to eliminate the deceased, hatched a plan and in pursuance thereof, asked her to accompany him to the fields of PW-7- mother of the deceased, to get firewood stack and the deceased had, accordingly, accompanied him to the fields. That PW.2- cousin sister of the deceased witnessed the appellant and the deceased while they were going to collect firewood. That they went to the fields of PW.7 where the latter gave a heap of firewood to the deceased at about 11.00 hours. That when the deceased with the heap of firewood and the appellant with an axe were returning home from the fields of PW.7, and when they reached the fields of PW.6, in execution of her plan, the appellant picked up a quarrel with the deceased and axed her to death. PW.6 witnessed the deceased and the appellant

quarrelling near the fields of PW.14. Further, the appellant took away the dead body of the deceased to the battaya orchard of PW.14 and kept it in the dried feeder channel of the field with the intention of screening the evidence. PWs.3 and 5 witnessed the appellant going in a hurried manner to Bogolu side after committing the offence. As the appellant and the deceased did not return home, PWs.1, 7 and their family members searched for them, but could not find them. On 28-07-2008, while they were searching in the fields, PW.12 found the deadbody of the deceased in the dried feeder channel of the fields and informed the same to PW.7. Later, PW.1, PW.7 and other family members rushed to the spot. PW.1 got the report scribed by PW.10 and lodged the same with PW.15- Head Constable in Ardhavedu Police Station, who registered the same as Crime No.40 of 2008 under Section 302 IPC, submitted the original FIR along with the complainant's report to the Additional Judicial First Class Magistrate, Markapur, and sent copies thereof to all the Officers concerned.

On receipt of the express FIR, PW.17- Inspector of Police visited the scene of offence in the presence of PW.11- Village Revenue Officer and LW.15- Golla Venkata

Narayana, seized the broken bangle pieces, an ear stud, blood stained earth, control earth from both the places where the dead body was found lying, drafted an observation report duly attested by the mediators and got photographed the scene of offence by LW.12- private photographer. PW.17 held inquest over the dead body of the deceased in the presence of the inquest Panchayatdars- PW.11, LW.15- Golla Venkata Narayana and PW.14. During the course of inquest, he examined PWs.1, 2, 5, 4, 13, 7, 8 and 9 and recorded their statements under Section 161 (3) Cr.P.C. He drafted inquest proceedings from 13.00 hours to 16.00 hours and got it attested by the Panchayatdars. Ex.P.4 is the inquest report. Subsequently, he sent the dead body of the deceased to the Government Hospital, Cumbum, for Postmortem Examination. Later, PW.17 examined PWs.3, 6, 10 and 12 and LW.12- Ganji Kishore and recorded their statements. PW.17 sent the seized material objects to RFSL, Guntur, for analysis. RFSL authorities analyzed the material objects and LW.17- FSL expert issued the report.

PW.16- Medical Officer, who conducted autopsy over the dead body of the deceased, issued Ex.P.9- Postmortem

Certificate wherein he opined that the cause of death of the deceased was due to shock and hemorrhage.

The initial attempts of PW.17 to apprehend the appellant went in vain. After completion of investigation, PW.17 filed the charge sheet. The appellant was apprehended on 19-05-2010.

Based on the charge sheet filed by the Prosecution, the trial Court has framed the following charges:

“Firstly:-

That you on 27-7-2008 at about 11-00 A.M at the fields of Madha Rama Linga Reddy did commit murder by intentionally (or knowingly) causing the death of the deceased Gummalla Lakshmi Devi your wife and thereby committed an offence punishable U/sec.302 of Indian Penal Code and within my cognizance.

Secondly:-

That you on 27-7-2008 at about 11-00 A.M. knowing or having reason to believe that certain offence, to vit u/sec. 302 IPC punishable under Indian Penal Code did cause certain evidence of the said offence to disappear to it and Sec. 201 IPC with the intention of screening the offence U/Sec. 302 IPC committed by you by commit murder of your wife from legal punishment and thereby committed the offence punishable U/Sec. 201 IPC and within my cognizance and that I direct you be tried by this court on the aforesaid charges.”

The plea of the appellant being one of denial, he was tried. The Prosecution has examined PWs.1 to 17, got Exs.P.1 to P.9 marked and produced MOs.1 to 6. On behalf of the defence, Exs.D.1 to D.3 were marked.

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

At the hearing, Smt.C.Vasundhara Reddy, learned Counsel for the appellant, submitted that in the absence of any eye witnesses, the Prosecution has failed to establish the crucial links such as motive and the last seen theory in the chain of circumstances and that, having disbelieved the version of PW.3 in toto and that of PW.7 in part regarding the last seen theory, the Court below has convicted the appellant merely based on the fact that he had absconded from the village. In support of her submission, she has placed reliance upon the following judgments:

Jaharlal Das vs. State of Orissa¹

State of Goa vs. Sanjay Thakran and another²

Musheer Khan @ Badshah Khan and another vs.

State of Madha Pradesh³

Sujit Biswas vs. State of Assam⁴

¹ (1991) 3 Supreme Court Cases 27

² 2007 (2) ALD (CrL.) 949 (SC)

³ 2010 (1) ALD (CrL.) 813 (SC)

Kanhaiya Lal vs. State of Rajasthan⁵

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh has submitted that the circumstantial evidence brought on record by the Prosecution establishes the guilt of the appellant beyond all reasonable doubts and that therefore, the Court below has rightly convicted the appellant and *inter alia* sentenced him to undergo Life Imprisonment.

We have considered the respective submissions of the learned Counsel for the parties with reference to the evidence on record and the relevant case law. This case is based on circumstantial evidence. In such a case, motive plays an important role. Though motive does not constitute the sole factor either to convict or acquit the accused, in a case based on circumstantial evidence, it serves as a crucial link in the chain of circumstances in arriving at the conclusion regarding his guilt. We shall, therefore, first discuss this aspect.

PW-1- brother of the deceased has given a report to the Police, based on which, Ex-P7 – F.I.R. was registered. He has *inter alia*, stated in the said report marked as Ex.P-1, that the deceased was his younger sister, who was given in marriage to

⁴ 2013 CRIL.J. 3140

⁵ (2014) 4 Supreme Court Cases 715

the appellant 10 years ago; that while living in Racherla, which is the native place of the appellant, the latter and the deceased used to come to their village now and then and stayed for some time; that they begot two children; and that for four months prior to the incident, they were staying in the shed of one Degala Ramaiah in Mohiddinpuram village, from last four months on rental basis. He further stated that some months after the marriage, the appellant started suspecting the fidelity of the deceased and subjected her to cruelty, mentally and physically and that in that connection, four or five times, his mother and other village elders have made compromise between the spouses. In Ex.P.4- Inquest Report in which PWs-2, 4 and 8 among others, participated as blood relations and witnesses, it was stated that after begetting two children, the appellant started suspecting the fidelity of the deceased and harassing her physically and mentally. In their evidence, both PWs-1 and 7 spoke about the said fact. No doubt, certain omissions were extracted from the evidence of PW-17- Investigating Officer, such as PW-1 not specifically stating that he came to know through the deceased about the physical and mental harassment meted out to her by the appellant suspecting her fidelity, the attempt made by the

appellant to set fire to her at Racherla one year prior to the occurrence, reporting of the matter at Racherla Police Station, PW-7 not specifically stating about the appellant starting harassing of the deceased three years after their marriage and necking her out from the marital home on several occasions, *etc.* The evidence of PWs-1 and 7 stood corroborated by the testimony of PWs-4 and 13. PW-4 stated that after the birth of two children, the appellant has developed suspicion against the deceased and started harassing her physically and mentally; that, she was also driven out by the appellant on four or five occasions; that on each such occasion, himself, one Kannoji Surya Singh and PW-7- the mother of the deceased, used to approach the elders of panchayat and settle the matter and that on their advise, the appellant used to take the deceased back. Even PW-13 deposed on the same lines as PW-4 did. Therefore, in spite of certain omissions that could be extracted from PW-17 based on the earliest version as reflected in Ex.P-1 given by PW-1, Ex.P-4 – inquest report and the oral testimony of PWs-4 and 13, amply corroborated the evidence of PW.1. It could, therefore, be safely concluded that the appellant suspected the fidelity of his wife, started harassing her and frequently driven her out of his house,

requiring intervention of mediators at the instance of PW-7 and PW-4. This conduct of the appellant would clearly prove his motive to do away with the life of his wife. We, accordingly, hold that the prosecution was able to prove motive for the appellant to kill his wife.

We shall now consider whether the evidence let in by the Prosecution is of such a conclusive nature, as would lead the Court to arrive at the only hypothesis of the guilt of the appellant. To recapitulate, it is the case of the Prosecution that on 27.07.2008 at around 11 a.m., the appellant has killed his wife in the fields of PW-14 and that he has caused disappearance of the evidence. To drive home these charges against the appellant, the Prosecution has mainly relied upon the evidence of PW-2, PW-3 and PW-7.

PW-2 who is the first cousin of PW-1 and the deceased, deposed that she used to visit the house of the deceased; that on 27.07.2008 at about 8.30 a.m., she had been to the house of the deceased; that by that time, the appellant was beating the deceased and the latter was weeping on a cot in a lying position; that the appellant then asked the deceased to accompany him to the fields of PW-1 to get the firewood stack; that the deceased requested PW-2 to accompany her to

the fields and accordingly, the witness followed the deceased and the appellant for some distance; that thereafter, she returned, as the appellant asked her to go away and the deceased did not object to the same; and that the said incident had taken place at about 9.30 a.m. She further deposed that on the same day at about 5.30 or 6.00 p.m., PW-7 came to her house and enquired about the deceased and that she told her the afore-mentioned events that had occurred in the morning. It was suggested to PW-2 that she has not stated that she is the immediate neighbour of the deceased; that she frequently visits her house; that the appellant beat the deceased on the date of the incident and that the deceased was weeping; that the appellant did not allow her to accompany the deceased to the fields; that she has seen the deceased on the day when she went missing and that the appellant and the deceased were not living together. With regard to the aforementioned suggestions, PW-17 was questioned and he admitted that PW-2 did not state before him those aspects, which she has spoken to in her evidence.

The most crucial witness is PW-7, the mother of the deceased and the mother-in-law of the appellant. She has deposed that at 7 a.m in the morning hours, her grand

children came to her and informed that the deceased was beaten by the appellant, that when she rushed to their house, her daughter requested her not to question the appellant for beating her as the appellant has threatened that he will leave her and that the deceased also told her that the appellant has asked her to accompany him to collect firewood stack at their fields. The witness further stated that she advised her daughter not to go for firewood, as it was raining and the stock was very much available. That by saying so, PW-7 left the house of her daughter to her fields for rearing cattle. That about 12 noon, she noticed both the deceased and the appellant collecting firewood and that on noticing the axe in the hands the appellant, she asked him the reason for bringing the axe, as there was no necessity for an axe, for collecting firewood available in their fields. She further deposed that she tied the firewood stack and handed over the same to the deceased and the appellant picked up mosambi fruits from their garden and left the fields at about 1 p.m. and the witness has stayed back at the fields till 5 p.m. That after returning home after sunset, her grand children came to her and informed that the deceased and the appellant did not return.

Nothing significant was elicited from the evidence of PW-7 regarding her seeing the appellant and the deceased in the fields. The learned counsel for the appellant, however, invited our attention to column IV of Ex.P-4, wherein PW-3 was cited as the last seen witness of the deceased alive, while she was quarrelling with her husband at the mosambi garden of PW-14. In column No.XI.A of Ex.P.4, it is clearly recorded that on 27.07.2008 at about 8 a.m., the appellant has kicked the deceased with left leg, that he forced the deceased to accompany him, armed with an axe, for collecting firewood, towards the agricultural fields of PW-7 situated near Bhairava Konda and that on seeing the appellant and the deceased, PW-7 stacked and tied the dry firewood and put it on the head of the deceased and thereupon, the deceased and the appellant have left the field of PW-7 at 11 a.m., informing that they are going home. Thus, column No.IV does not reflect the true contents of Ex.P-4. The earliest version of the prosecution as reflected in Ex.P-4, clearly reveal that PW-7 was the last seen witness.

Though the charges framed are to the effect that the murder has taken place at 11 a.m., not much significance could be attached to it because, the witnesses are rustic

villagers and they are not expected to reveal the time with precision. It could well be that PW-1 and PW-7 must have seen the appellant along with the deceased, at their fields around 11 a.m., if not exactly at 11 a.m. and the murder must have taken place within an hour or so, thereafter.

The postmortem was conducted by PW-16 on 29.07.2008 between 10 a.m. and 12.30 p.m. He has deposed in the evidence that the approximate time of death is two to three days prior to the postmortem examination. The alleged murder has taken place on 27.07.2008 at about 11 a.m. Thus, it is reasonable to presume that the death might have taken place between 11 a.m. and 12 noon.

In order that the last seen theory is accepted, the prosecution must prove proximity in time, between the deceased being last seen alive with the accused and the commission of the offence. In **Bodh Raj alias Bodha and others Vs. State of Jammu and Kashmir**⁶, the Supreme Court held as under:

“The last-seen theory comes into play where the time-gap between the point of time when the and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the

⁶ (2002) 8 SCC 45 (SC)

and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt of those cases.....”.

In **Ramreddy Rajeshkhanna Reddy and another Vs. State of A.P.**⁷, the Supreme Court held that even in the cases where time gap between the point of time when the accused and the deceased were seen alive and when the deceased was found dead is too small and the possibility of involvement of any person other than the accused is impossible, the Courts should look for some corroboration.

In **Jaswant Gir Vs. State of Punjab**⁸, the Supreme Court observed that in the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the last-seen evidence, even if the version of the prosecution witness in that regard is believed.

In **Sanjay Thakran** (2 supra), the Supreme Court while reiterating the principle that the time gap between the accused and the deceased last seen together and the crime coming to light, must not be long, however, held that if the prosecution is able to lead such an evidence that there is likelihood of any person other than the accused, being author

⁷ JT 2006 (4) SC 16

⁸ (2005) 12 SCC 438

the crime, becomes impossible, then the circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons.

In **Kanhaiya Lal** (5 supra) the Supreme Court held that the circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime and that there must be something more establishing connection between the accused and the crime that points to the guilt of accused and none else.

From the evidence on record, as discussed above, it is clear that PW-7 has seen the appellant and deceased together at her field, shortly before the deceased met with the homicidal death. The appellant, however, made an effort to make the Court believe that he was not at all living in the village for four years preceding the occurrence. Suggestions to this effect were made to PWs-1, 2 and 7. Except making these suggestions, the appellant could not produce any evidence to substantiate that he was staying at Hyderabad. On the contrary, all the witnesses consistently and in one voice, spoke about the fact that after several panchayats were held, the

appellant shifted from his native residence at Racherla village and started living in the house of one Degala Ramaiah, as a tenant at Mohiddinpuram, the native place of PWs-1, 7 and the deceased. Though the prosecution has not examined the said Degala Ramaiah, this Court has no reason to discard the evidence of witness like PW-1, who is not only the brother of the deceased but also the husband of the sister of the appellant. It is not possible to believe that PW-1 would go to the extent of falsely implicating the appellant, being the brother of his own wife. We are, thus, satisfied from the evidence on record that the appellant has shifted his residence from his native village Racherla, to the village of the deceased i.e. Mohiddinpuram, and was living with the deceased at the time of occurrence.

When the plea set up by the appellant that he was not living in Mohiddinpuram along with the deceased was found false, his conduct on the fateful day becomes relevant. Assuming that he did not accompany the deceased to the fields for collecting firewood, when the deceased went missing, as her husband, the appellant should have developed anxiety and concern, much more than any one else including PWs-1 and 7. It has come out in the evidence of the

prosecution witnesses that on PW-7 coming to learn from her grandchildren that the deceased went missing, she along with PW-1, PW-2 and others, left the village in the evening and searched for the deceased around the village. The appellant neither accompanied the search party nor gave any report to the police. In fact, his whereabouts were not known for 22 months from the date of occurrence till 19.05.2010, when he was arrested by the police.

No doubt, as held in **Sujit Biswas** (4 supra), the mere abscondance of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest. Abscondancy, nevertheless, is a relevant evidence and its evidentiary value depends upon the surrounding circumstances.

The aforementioned circumstances, namely, the appellant not taking part in tracing the whereabouts of the deceased and his not reaching out for the police and giving a report add up to his abscondence for 22 months would lead to drawing a reasonable inference that he ran away from the scene of offence with guilty mind and fear of being caught for the offence committed by him.

In **Jaharlal Das** (1 supra), the Supreme Court dealing with the case based on circumstantial evidence held that in order to sustain the conviction the prosecution must satisfy the following three conditions.

- “(i) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.”

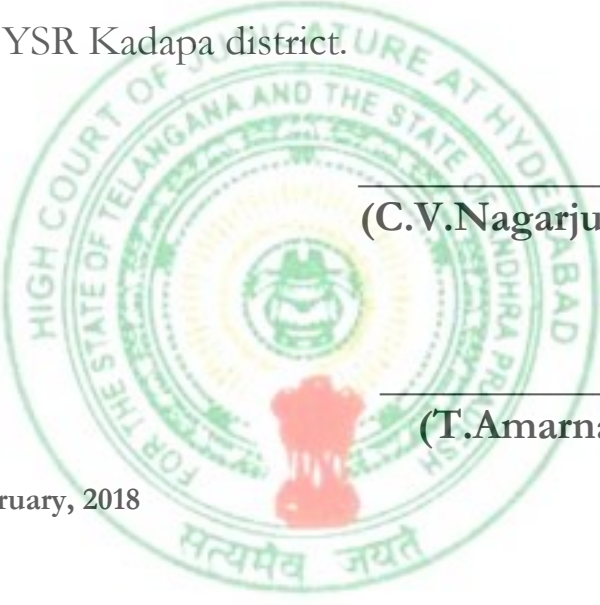
In **Musheer Khan @ Badshah Khan** (3 supra), the Supreme Court held that presumption of innocence of the accused will play a dominant role and presumption arising under Section 106 of the Indian Evidence Act in a trial for murder is extremely weak in comparison with the dominant presumption of the innocence.

In our opinion, these two judgments on which heavy reliance is placed by the counsel for the appellant could not be of help to her client as the evidence on record

unerringly point to the guilt of the appellant beyond all reasonable doubt.

Hence, we do not find any reason to interfere with the judgment of the lower Court. The Criminal Appeal is, therefore, dismissed.

The appellant's bail bonds are cancelled and the appellant shall forthwith surrender before the Superintendent, Central Jail, YSR Kadapa district.



(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 28th February, 2018
lur/msb

