

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

* THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON' BLE SRI JUSTICE N. BALAYOGI

+ CRIMINAL APPEAL No.131 OF 2012

%Date: 23.06.2018

Between:

Sathannal Anand @ Balappagari Anand,
Aged about 29 years, S/o.B.Venkataramanappa,
Vasapparallapalli, Pathapalem Mandal,
Bagepalle Mandal, Karnataka State
Now residing at B.Kothapalli Village, Talupula Mandal

...Appellant

Vs.

\$ State of Andhra Pradesh,
Rep.by its Public Prosecutor,
High Court, Hyderabad.

.. Respondent

! For Appellant

: M/s.G.Niveditha
Mr.P.Bhanu Prakash
Legal Aid counsel

^ For Respondent

: Additional Public Prosecutor

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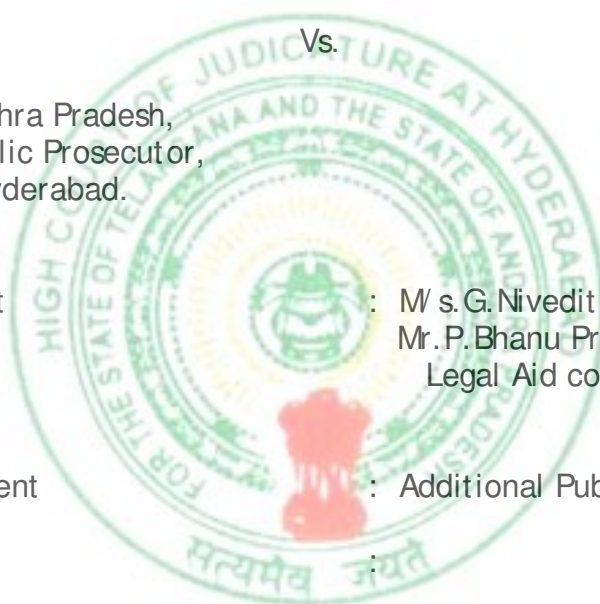
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> Head Note

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? Cases Referred

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HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.131 OF 2012

ORDER: (per V. Ramasubramanian, J)

Challenging his conviction for an offence under Section 302 IPC and the life imprisonment awarded by the Sessions Court, the sole accused has come up with the above appeal.

2. Heard Mr.P.Bhanu Prakash learned legal aid counsel, representing the appellant and the Additional Public Prosecutor for the State of Andhra Pradesh.

3. On a complaint, dated 14.11.2010 made by PW.1 and marked as Ex.P.1, that her son aged about 8 years was killed by the accused, who was none other than the son-in-law of PW.1, a charge for an offence under Section 302 IPC, was framed against the accused. The de facto complainant was examined as PW.1 and her complaint was marked as Ex.P.1. The daughter of PW.1, who was the wife of the accused, was examined as PW.2. The charge proceeded on the basis of last seen theory, for establishing which two witnesses were examined as PWs.3 and 4, who also belonged to the same village.

4. It was the case of the prosecution that the deceased boy aged about 8 years informed one Pala Ramana, about the theft of his cycle by the accused and that bearing grudge against the deceased for such an information being passed on, the accused took the deceased to a canal by name, Gangamma Vanka, and forcibly drowned him and committed the murder. In order to prove such a motive, two witnesses were examined as PWs.5 and 6. But, Pala Ramana, whose cycle was allegedly thieved by the accused, could not be examined as he was no more at the

time of trial. Though the prosecution claimed that there were several cases of theft pending against the accused, none of those First Information Reports were marked in evidence. PWs.5 and 6 were only hearsay witnesses about the motive.

5. PW.7, who is a localite, claimed in chief examination that he was a direct eye witness to the accused drowning the deceased after throttling his neck. But, he claimed that he did not inform the police about the incident immediately out of fear for the accused. But, he also claimed that he informed the police after two days.

6. A person, who claimed to be an eye witness, at the time when the accused was apprehended in a toddy shop, was examined as PW.8. But, interestingly, the arrest appears to have been made after about four months, namely on 09.02.2011. This is despite the fact that Ex.P.1 complaint specifically named the accused as the perpetrator and it was not the case of the prosecution that after the commission of the offence, the accused was absconding for about four months.

7. One of the panchanama witnesses was examined as PW.9. The doctor, who conducted the postmortem, was examined as PW.10. The Assistant Sub-Inspector of Police, who registered the FIR on the basis of Ex.P.1, was examined as PW.11. The Investigating Officer was examined as PW.12.

8. As we have stated earlier, the final report filed by the police was on the ground that on 12.11.2010 at about 4.30 p.m., the accused took the deceased to B.Kothapalli village, beat him with hands, dragged him to the side of the Gangavanka and killed him by throttling his neck and drowning him in the water. But, very interestingly, the prosecution proceeded mainly on the basis of last seen theory, rather than on the basis of the purported direct eye witness account of PW.7. According to

PWs.3 and 4, the deceased was last seen with the accused at 4.00 p.m. on 12.11.2010. The same night, the accused allegedly returned to the very same house where PWs.1 and 2 were staying. Even according to Ex.P1, the complaint made by the mother-in-law of the accused, the accused went along with the deceased on 12.11.2010, but returned alone in the evening.

9. But, even according to PW.1, she came to know about the dead body of her son being in the waters of Gangamma Vanka, only at 1.00 p.m., on 14.11.2010. This means that for a clear period of about 45 hours, the child was not to be traced. But no complaint was lodged about the missing son.

10. The body was taken for postmortem and according to the postmortem report Ex.P.5, the postmortem was conducted at about 12.30 p.m., on 15.11.2010. The postmortem certificate Ex.P.6 stated that the cause of death was due to asphyxia and may be drowning. The postmortem report also fixed the time of death approximately about 18 to 26 hours prior to postmortem examination.

11. The approximate time of death fixed under Ex.P.5 by the Doctor who conducted the postmortem, falls around 10.00 am on 14.11.2010. But, even according to PW.1, the deceased was last seen at 4.00 pm on 12.11.2010. If these pieces of information are grouped together, the death had occurred after about 30 hours of the time when the accused was last seen with the deceased. But, as per PW.1, the accused came back home in the evening of 12.11.2010. Therefore, the last seen theory goes.

12. Coming to the direct eye-witness account, claimed by PW.7, he stated that he saw the accused dipping the boy in the water and throttling his neck. But, Ex.P.5 the postmortem report did not confirm

the throttling. Even Ex.P.12, report of the Forensic Science Laboratory did not corroborate the throttling. Ex.P.11 very clearly stated that the Hyoid bone sent for expert opinion was intact. Therefore, the eye witness account claimed by PW.7 falls to the ground as it is not supported by Ex.P.5, P.11 or P.12. Even the external and internal injuries noted by PW.10, the doctor who conducted the postmortem examination does not corroborate the theory of throttling of the neck advanced by P.W.7.

13. The evidence of PW.7 is also unbelievable, in view of the fact that after having been an eye witness to the occurrence, he claimed not to have informed about the incident to the police immediately, or even to other villagers, but informed the same to the police two days after the incident. But, this claim is not supported by FIR or the charge sheet. The officer who registered the FIR examined as PW.11 or the investigating officer examined as PW.12 did not say that PW.7 informed them of the incident atleast after two days. Even PW.1 did not claim that she was informed of the occurrence by any eye witness account. All that she said was she was informed about her son's body being found in the waters.

14. In the cross-examination, it was admitted by PW.1 that the accused was none other than her son-in-law and that she had ill feelings with him. PW.2 who is the wife of the accused also confirmed that she had ill feelings towards her husband and that the matrimonial life was disturbed.

15. In the light of the fact (1) that the police did not rely upon the eye witness account of PW.7, but choose to go on the basis of last seen theory; (2) that even as per the last seen theory the accused was with the deceased at 4.00 pm., on 12.11.2010, but the accused returned

home on the very same evening, though the death occurred approximately at about 10.00 a.m., on the morning of 13.11.2010, as per medical evidence; (3) that the theory that the neck of the deceased was throttled and he was drowned, is not corroborated by Exs.P.5, P.11 and P.12 and also by the external and internal injuries recorded by PW.10; (5) that there was no explanation from PW.1 as to what happened for a period of two full days from the evening of 12.11.2010, the date on which the deceased was last seen, up to the time at which she was informed of the death of her son in Ex.P.1, we are of the considered view that the appellant-accused was entitled to the benefit of doubt.

16. The trial Court primarily went on the basis of the last seen theory and the evidence of PWs.3 and 4. The trial Court went on the premise that the accused was none other than the son-in-law of PW.1 and the husband of PW.2 and that their evidence was clear. But, unfortunately, the admission made by PWs.1 and 2 that they had ill feelings towards the accused and the admission that the marriage ran into rough weather, was not taken note of. A clear time gap between the last seen theory and the time of death belies the case of the prosecution.

17. Therefore, we give the benefit of doubt to the accused and allow the appeal setting aside the conviction and sentence awarded by the trial Court.

18. In the result, the criminal appeal is allowed and the impugned judgment of conviction and sentence, dated 19-09-2011, in Sessions Case No.304 of 2011, passed by the Additional Sessions Judge, Hindupur, against the appellant/accused is set aside. The appellant/accused shall be released forthwith unless he is detained in connection with any other offence.

19. As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

June 23, 2018
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