

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

Crl.A.No.819 of 2011

Date: 13.06.2018

Between:

State of Andhra Pradesh,
rep. by the Public Prosecutor,
High Court of A.P., Hyderabad ... Appellant

And

Thallavalasa Srinu, S/o.Appanna,
30 years, Rajaka, West Vipparru,
Pentapadu mandal,
West Godavari district. ... Respondent

Counsel for the Appellant : Public Prosecutor (AP)

Counsel for the Respondent: Mr.Yellabandi Ramathirta

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal is filed by the State against judgment dated 28.12.2005 in Sessions Case No.250 of 2003 on the file of the V Additional Sessions Judge (FTC), West Godavari, Eluru, whereby, the sole accused was acquitted of the charge for the offences under Sections 201 and 302 I.P.C.

2. The case of the prosecution in brief, is as follows:

The accused is a resident of West Vipparru village and one T.Venkata Lakshmi (hereinafter referred to as 'the deceased') was his second wife. That, about 10 years ago, the accused married the elder sister of the deceased and stayed in Chilukuru village of Undi mandal and had two children, a boy and a baby girl; that later due to family disputes, the first wife of the accused died by consuming poison at Chilukuru and due to the interference of the caste elders, the matter was not reported to the police and her dead body was cremated. That, the baby girl was taken in adoption by PW-1, the brother of the deceased, but later she died and the son was with the accused. That, later the deceased agreed to marry the accused to look after her elder sister's children and they got married about 6 years prior to the incident and started living in the house of PW-2 on rent and the accused was working as a washerman. That while so, the accused developed illicit relationship with one Mavullamma and started neglecting the deceased and on coming to know about the same, the deceased started questioning the accused; that on 29.12.2002, there

was a quarrel between the accused and deceased about the illicit relationship of the accused with the said Mavullamma; that the accused beat the deceased and she fell on the ground and that the accused took out a pillow and pressed it on her face until she lost her breath. That, thereafter, the accused took out the saree of the deceased and tied the same around her neck and hanged her to the beam inside the house to show as if the deceased committed suicide having quarrelled with him, bolted the doors from inside and went out of the house. That, at 9 p.m., the accused approached his mother, brother and sister-in-law and informed them that he had a quarrel with his wife and that when he returned home, the doors were found bolted from inside; that, when the accused along with his mother and brother went to his house, the main door was bolted and as such, they entered through the back door and found the deceased hanging and dead and that the same was informed to PW-1 over telephone. That on 30.12.2002, PW-1 came to West Vipparu and suspected the cause of death of the accused and gave a report to the police at 7 a.m., that the Head Constable, PW-7, who was in charge of Pentapadu Police Station, received the report and registered the same as Crime No.127 of 2002 u/s. 174 Cr.P.C. (suspicious death); that as per the instructions of his superiors, PW-7 requested PW.6 to hold inquest over the dead body of the deceased and secured the mediators at the scene of offence at 9 a.m. and made observations of the scene of offence. That, PW.6 reached the scene of offence and

from 11 a.m. to 1.30 p.m., he held inquest over the dead body of the deceased with the assistance of panchayatdars and later sent the dead body for post mortem examination to Area Government Hospital, Tadepalligudem. That, PW.5 and another doctor conducted autopsy over the dead body on 30.12.2002 and preserved the viscera contents and issued the post mortem certificate, reserving their opinion pending receipt of the analysis report. That, after receiving the analysis report, PW.5 and another doctor gave their final opinion that the death might be due to mechanical asphyxia probably due to smothering. That on 26.03.2003 at 9.30 p.m., the S.I. of Police received the final opinion and altered the provision of law from Section 174 Cr.P.C. to Section 302 I.P.C. in Cr.No.127 of 2002 and submitted express copies of F.I.R. to all the concerned. PW-8, the Inspector of Police, Tadepalligudem, received the Express copy of FIR on 26.03.2003 and took up the investigation into the case and found the accused at large. That, on 28.03.2003 at 11.30 a.m., the accused himself voluntarily appeared before PW.4 when he was in the panchayat office and confessed that he killed his wife by using a pillow, by placing the same on her face and pressing until she lost her breath; that, to show that she hanged herself, he tied her saree around her neck and hanged her to the beam, bolted the doors from inside and went out of the house and that he promised to show the pillow. That, PW-4 recorded the statement of the accused and brought him to Pentapadu Police Station at 1 p.m. on 28.03.2003 and produced

him before PW.8. That, on production of the accused by PW-4 with his confessional statement, PW.8 arrested the accused immediately, interrogated him and at his instance, visited the house of the accused at West Vipparru and at 2.30 p.m. on 28.03.2003, seized the pillow used by the accused for murdering the deceased, under cover of the mediator's report and brought back the accused to Pentapadu police station and placed him in the police lock up at 4.15 p.m. That, on 29.03.2003, the accused was produced before the Court along with the remand report and he was taken into judicial custody by the Court. PW-8 accordingly laid the charge sheet against the accused for the offence u/s.302 I.P.C.

3. On considering the charge sheet and the other material collected during the investigation, the lower court has framed the following charges against the respondent-accused:

“Firstly: That you, on the 29th day of December, 2002 after 7.00 p.m. in one of the portions of the house of Modepalli Subbulu at West Vipparru of Pentapadu mandal, did commit murder by intentionally or knowingly causing the death of your wife by name Venkata Lakshmi, by pressing her face with the help of a pillow until she lost her breathe, as a result of which, she died and that you thereby committed an offence punishable under Section 302 of I.P.C. and within my cognizance.

Lastly: That you, at about the same time, date and place of offence as mentioned in Charge No.1 supra, knowing that certain offence, punishable with imprisonment for life or death has been committed, did cause certain evidence of the said offence to disappear, to wit, that you have tied the saree around her neck and hanged her to the beam inside the house, after having committed murder, pretending that the deceased herself committed suicide, and hereby

committed an offence punishable under Section 201 r/w.
302 of I.P.C. and within my cognizance.”

4. As the plea of the respondent was one of denial, he was subjected to trial during which, PWs 1 to 8 were examined, Ex.P.1 to P.19 were marked and MOs.1 to 5 were produced by the prosecution. On behalf of the defence, no evidence was let in. On consideration of the oral and documentary evidence, the lower court has acquitted the respondent-accused of both the charges and found the respondent-accused, not guilty of the charges framed against him.

5. Mr.Posani Venkateswarlu, learned Public Prosecutor (AP), submitted that as the presence of the respondent at the scene of offence just prior to the occurrence is proved by the evidence of PW-2, the owner of the house in which the accused and deceased were living as tenants, the burden lies on the respondent under Section 106 of the Indian Evidence Act, 1872 (for short ‘the Act’), to explain the cause of death. That the respondent has failed to discharge this burden and that the court below has wrongly acquitted him. He has further argued that non-explanation of the cause of death itself constitutes a link in the chain of circumstances and setting up a false defence equally constitutes a link and that in the instant case, apart from the fact that the respondent failed to discharge the burden under Section 106 of the Act, he has also set up a false plea of suicide by the deceased, which was fully falsified by the medical evidence and

that, therefore, both these circumstances constitute strong links in the chain of circumstances. In support of this submission, he relied upon the judgment in GAJANAN DASHRATH KHARATE VS. STATE OF MAHARASHTRA¹.

6. Mr.Yellabandi Ramathirta, learned counsel for the respondent opposed the above submissions and argued that as the case is based on circumstantial evidence, the prosecution has failed to establish all the links in the chain of circumstances and that they have failed to bring out any evidence, which connects the respondent to the alleged offence. He further submitted that there is no evidence whatsoever, to show that the respondent was present at the time of death of the deceased and that, therefore, Section 106 of the Act, cannot be pressed into service against him. It is his further submission that even if the defence has come out with a case which was found false, that by itself, cannot be made a basis for convicting the accused in the absence of any corroborative evidence, connecting the accused to the crime.

7. We have carefully considered the respective submissions of the learned counsel for both the parties.

8. The alleged offence has taken place within the four walls of the house of the accused and the deceased. So, there was no eye witness to the incident. In support of its case, the prosecution mainly relied

¹ (2016) 4 SCC 604

on the last seen theory and Section 106 of the Act. It has also relied upon the evidence of PW-2. In his chief examination, PW-2 deposed that on the date of incident, the respondent and his wife had a quarrel at about 9 p.m., during which, the former slapped the latter and went away. Under the 1st charge, it is alleged that after 7 p.m., the respondent has committed murder by pressing her face with the help of a pillow. The prosecution failed to bring out the approximate time of death. As per the evidence of PW-2, the deceased was alive at least till 9 p.m. and that the respondent left the deceased and went away after slapping her. No evidence, either direct or circumstantial, has been let in by the prosecution, to the effect that at the time of the actual occurrence, the respondent was at home. While there is no quarrel with the proposition laid down in GAJANAN DASHRATH KHARATE (supra) that, if the presence of the accused at the time of occurrence is proved, he is duty bound to explain as to how the death has occurred, in the said case, the prosecution has proved the presence of the accused at his home on the night of the occurrence, whereas in the present case, as discussed above, it is the positive evidence of PW-2 that after slapping the deceased at about 9 p.m., the respondent left the house. In the absence of any evidence as to the actual manner in which the alleged offence was committed and any evidence pointing to the presence of the accused at the time of occurrence, the provisions of Section 106 of the Act, cannot be invoked. Therefore, the burden does not lie on the respondent to

explain as to how the death has taken place. It is for the prosecution to prove beyond reasonable doubt, not only that the death was homicidal, but also that the respondent has caused such death.

9. No doubt, the medical evidence i.e. Ex.P11 – post mortem report and the deposition of PW-5, the doctor who conducted autopsy and issued the post mortem report, reveal that the death is due to mechanical asphyxia due to smothering. Therefore, as rightly submitted by the learned Public Prosecutor, the suggestion put to the witness on behalf of the defence that the deceased has committed suicide, is false. But as argued by the learned counsel for the respondent, mere false suggestion by the defence, does not *ipso facto* prove the guilt of the accused. As observed hereinbefore, the prosecution must prove that it is only the respondent-accused who must have caused the death. No recoveries from the respondent were effected. Therefore, Ex.P-9, the alleged confessional statement of the respondent-accused, is hit by Sections 26 and 27 of the Act and the same cannot be relied upon. Once Ex.P-9 is eschewed from consideration, no other evidence has been brought out by the prosecution to link the respondent to the alleged offence. It is well settled that howsoever strong suspicion may be, it would not take the place of proof. The respondent, therefore, cannot be convicted on mere suspicion. The court below in our opinion has rightly disbelieved the case of the prosecution and acquitted the respondent.

10. Hence, we do not find any reason to interfere with the judgment of the lower court and the appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 13th June, 2018

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