

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

CRIMINAL APPEAL No.575 of 2012

25.09.2018

Between:

Verpula Swarna Manjula @ Manjulatha

..Appellant

and

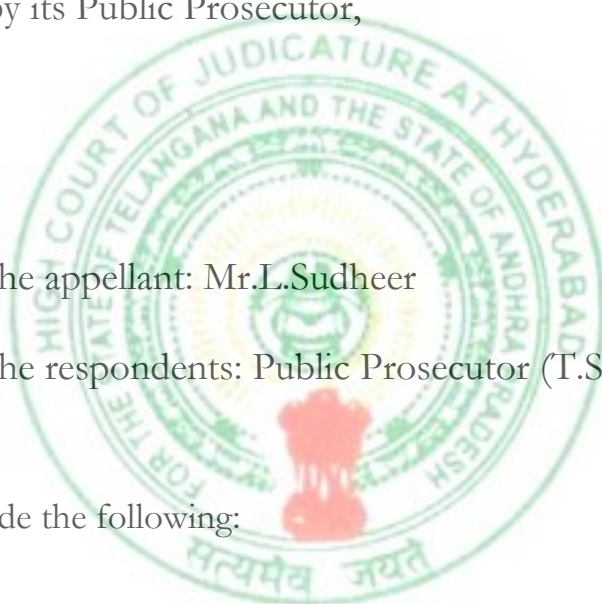
The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Mr.L.Sudheer

Counsel for the respondents: Public Prosecutor (T.S.)

The Court made the following:



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

The sole accused in Sessions Case No.464 of 2011 on the file of learned I Additional Sessions Judge, Khammam, filed this appeal against judgment, dated 21.06.2012, passed in the said case, whereby she was convicted for the offences punishable under Sections 302, 404 and 201 I.P.C. She was sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs.100/- for the offence punishable under Section 302 I.P.C. and was sentenced to suffer rigorous imprisonment for three years and also to pay a fine of Rs.5,000/- and in default of payment of fine, to suffer simple imprisonment for six months for the offence punishable under Section 404 I.P.C. She was further sentenced to suffer rigorous imprisonment for three months and also to pay a fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for six months for the offence punishable under Section 201 I.P.C.

2. The case of the prosecution is, briefly, stated as follows.

(i) On 13.06.2011 at 20.30 hours, P.W.1 - the *de facto* complainant, lodged written report in Telugu to the Police, Khammam I Town Police Station, stating that he along with his wife (P.W.2) and mother - Rangavajjula Rukmini (hereinafter

referred to as 'the deceased') were residing in his house bearing registration No.8-8-242/1 at Shivalayamveedhi, Khammam. On the same day at about 06.40 hours, he and his wife went out on their jobs and his mother – the deceased alone was in the house. At 17.30 hours, when P.W.1 returned to the house, he found the deceased sleeping over the cot in the hall. When, he tried to wake her up, there was no response from her and, therefore, having got afraid, he called the neighbours and observed that the deceased died. He also noticed that four gold bangles, one gold chain, one pair of ear studs and one pair of silver anklets of the deceased were missing from her person. He further stated that his mother was suffering with high blood pressure (B.P.) and was using medicines continuously. He suspected that his mother died due to heart stroke and that some unknown culprits might have taken away the above gold and silver ornaments. He, therefore, requested to take necessary action.

(ii) On receipt of the complaint, P.W.11 – Inspector of Police, examined and recorded the statement of P.W.1 in Part II case diary, visited and observed the scene of offence and the dead body of the deceased, drafted the crime details form

before the mediators – P.W.8 and L.W.11 – Dadi Eswaramma, got photographed the scene of offence and the dead body with the help of the private photographer – P.W.5, secured the witnesses – P.Ws.2, 3 and 4 and L.Ws.3 and 6 – Rangavajjula Srinvas and Nagula Harika, respectively, recorded their statements and held inquest over the dead body of the deceased before the same mediators. Later, P.W.11 sent the dead body of the deceased to the Government Headquarters Hospital, Khammam, through proper requisition for conducting autopsy over the dead body and accordingly, P.W.10 - medical officer, conducted autopsy and preserved the vital organs i.e., stomach, small intestine, liver and right kidney etc., Further, P.W.11 secured the witnesses – P.Ws.6 and 7, examined and recorded their statements in Part II case diaries. The scene of offence was situated at the house, where P.Ws.1 and 2 and the deceased were residing; that the exact scene of offence was in the hall; and that no incriminating material was found in the scene of offence as regards committing the offence.

(iii) During the course of investigation, it was revealed that the deceased was blessed with three sons. P.W.1 and L.W.3 – Rangavajjula Srinvas, were the younger and second

sons of the deceased respectively. P.W.2 is the wife of P.W.1 and the accused is the wife of L.W.3. The accused was working as staff nurse at Mamatha General Hospital, Hyderabad. She completed staff nurse course training at Osmania General Hospital, Hyderabad in the year 2003. Later, she joined in Kinnera Hospital, Khammam as staff nurse. While the accused was working in the said hospital, L.W.3 joined as a Technician in the same hospital. Both of them developed acquaintance with each other and fell in love and their *inter caste* marriage took place in the year 2005. Since then, the accused and L.W.3 were leading conjugal life by living in a rented house at Burhanpuram by separating from the joint family of P.W.1. In the year 2007, the family members of the husband of the accused partitioned their ancestral properties equally among the three brothers; and after partition, L.W.3 and the accused disposed of their share of property. Even thereafter also, the accused and L.W.3 were frequently visiting the house of P.W.1, where the deceased was staying. The accused used to look after the health condition of the deceased as she was suffering with high B.P. since last ten years. Taking this opportunity, the accused decided to kill the deceased and steal away the gold and silver ornaments from the deceased, who lives lonely when

P.Ws.1 and 2 go out on their jobs by leaving her in the house as the accused and her husband's earnings are meager to meet their family expenses as both of them are doing private jobs. On 13.06.2011, the accused decided to execute her plan as on that day P.Ws.1 and 2 must attend the schools where they work as it was the reopening day of the schools. At 8.00 hours, the accused went to Mamatha General Hospital, Khammam, for attending to her job, entered into I.C.U. room, took the "Pavulon" sample medicine and one dispovan syringe and went to the house of the deceased with an intention to kill and steal her ornaments by administering the said poison injection. Accordingly, at 10.40 hours, the accused executed her plan and stolen away four gold bangles, one gold chain, one gold ring, one pair of gold ear studs and one pair of silver anklets from the person of the deceased and went away by throwing the disposed syringe near the wall of Khilla situated on the northern side of the house and poison sample in the drainage. The accused directly went to her rented house and kept the entire stolen property in their almirah. Later, on the same day at 17.30 hours, the accused and L.W.3 received information about the death of the deceased from P.W.1 through phone.

Immediately, the accused along with L.W.3 rushed to the house of P.W.1 by managing her criminal acts wisely.

(iv) On 17.06.2011, at 08.00 hours, on reliable information, P.W.11 apprehended the accused at her house and interrogated her. During the course of interrogation, the accused voluntarily admitted her guilt. Immediately, P.W.11 secured the presence of the mediators – P.W.9 and L.W.13 – Md.Jakeer, and conducted confession and recovery panchanama of the accused. On confession of the accused, the entire stolen property was recovered from her almirah under the cover of panchanama in the presence of the mediators. Later, P.W.11 proceeded to the scene of offence along with the same panchas and the accused, seized one dispovan syringe near Khilla wall besides the house of the deceased through separate panchanamas and brought her to the Police Station and thereafter, she was sent to judicial custody. Therefore, the accused committed the offences punishable under Sections 302, 380 and 201 I.P.C.

3. Based on the charge sheet and the material collected during the investigation, the Court below framed the following charges.

“Firstly:

That you on 13.06.2011, at about 1040 hours, at Shivalayamveedi, Khammam, went to the house of your mother-in-law, by name, Rangavujjala Rukhmini, aged 57 yrs., when she was alone in the house and did commit murder by intentionally causing the death of Rukhmini, by giving “Pavulon” poison injection to her by saying it is multi vitamin, in order to commit theft of gold ornaments from her, and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code, and within my cognizance.

Secondly:

That you, on or about the same day, time, place and during the course of same transaction as specified in charge No.1 above, committed theft of four gold bangles, one gold chain, one gold ring, one pair of gold ear studs and one pair of silver anklets from the possession of the deceased-Rukhmini, and that you thereby committed an offence punishable under Section 380 of the Indian Penal Code, and within my cognizance.

Lastly:

That you, the date, place as mentioned in charge No.2, with common intention, knowing that certain offence punishable with u/s.302 IPC has been committed, did cause certain evidence of the said offence, thrown the disposed syringe near wall of Khilla situated on the northern side of the wall and poison ample in the drainage, with the intention of screening the said offence from legal punishment and

thereby committed an offence punishable under Section 201 I.P.C. and within my cognizance.”

4. As the plea of the accused was one of denial, she was subjected to trial, during which, the prosecution examined P.Ws.1 to 11, got Exs.P-1 to P-10 marked and produced M.Os.1 to 6. On behalf of the defence, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted hereinbefore.

5. At the hearing, Mr.L.Sudheer, learned counsel for the appellant/accused, has submitted that the prosecution failed to prove that the death of the deceased was homicidal and that the appellant is responsible for causing the death. He has further submitted that the alleged recovery of M.Os.1 to 5 and identity of the said ornaments as belonging to the deceased were not legally proved by the prosecution and that in the absence of such proof, it failed to establish the nexus between the appellant and the alleged murder. The learned counsel has also submitted that the prosecution has failed to prove that M.O.6 contained any poisonous substance and it also failed to prove the source from which the appellant allegedly procured the

pavulon drug allegedly administered by her to the deceased in causing her death.

6. Opposing the above submissions, the learned Public Prosecutor (T.S.) has supported the judgment of the Court below.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

8. This is a case based on circumstantial evidence as no one witnessed the commission of the alleged offence. In a case based on circumstantial evidence, motive plays a very important role. The motive attributed to the appellant is to commit theft of gold and silver ornaments by killing the deceased. None of the prosecution witnesses specifically spoke about the motive. Therefore, the prosecution has failed to establish its case regarding the motive.

9. As regards the cause of death, in Ex.P-7 - postmortem report, P.W.10 reserved his opinion awaiting report from the Forensic Science Laboratory (F.S.L.) and after receipt of the said report, he gave his opinion *vide* Ex.P-9 to the effect that

the death was caused due to cardio arrest as there was no poisonous substance in the viscera. In his deposition, P.W.10 referred to his opinion given in Ex.P-9. He deposed that viscera comprises liver, pancreas, large intestine, kidney and stomach and that if any material is injected into the body, depending on the drug character, it chooses its path for excretion and biologically, it is found in different organs. He also deposed that pavulon is neuro muscular blocking agent, which is mainly used by anesthetists and in I.C.U. care units; that if it is administered in over dose, it results in cardio respiratory arrest; that it will work within two to four minutes; that if this drug is excreted through bile and urine, it will disappear from the body within two to four hours; and that therefore, it cannot be found in F.S.L. report or post mortem report. In the cross-examination, P.W.10 admitted that no poisonous substance was found in item Nos.1 to 4 i.e., piece of stomach and intestine, piece of liver and kidney, turbid liquid and an empty syringe.

Ex.P-8 – F.S.L. report, also shows that on the analysis of the aforementioned items, no poisonous substance was found therein. Even in the syringe, which was allegedly recovered at

the instance of the appellant, no poisonous substance was found. It needs to be further noted that the investigation agency failed to trace the source from which the appellant has procured poison. In a case of death by poisoning, the burden lies on the prosecution to establish the source from which the accused procured poison. The prosecution miserably failed in this regard.

10. The evidence discussed above would show that the prosecution failed to prove with certainty that the cardio respiratory arrest was on account of administration of poison and that consequently, the death was homicidal. When the prosecution failed to prove that the death was homicidal, the entire charge against the appellant that she is responsible for causing the death must fall to ground.

11. With respect to recovery, Ex.P-5 is the confession and seizure panchanama. A perusal of the contents of this document shows that by the time all the panch witnesses including P.W.9 went to the Police Station at the request of the Police, the appellant was already in the custody of the Police and produced a paper packet before the panchas, which contained four gold bangles, one gold chain, one gold ring with

idol, two ear studs and two silver anklets. In his evidence, P.W.9 deposed that when they went to the Police Station, the Police and the accused were present; that they were present when the accused was being enquired, and that the appellant showed them M.Os.1 to 5. Thus, Ex.P-5 and the testimony of P.W.9 clearly show that M.Os.1 to 5 were allegedly recovered from the possession of the appellant while in the Police custody. It is, therefore, evident that the prosecution failed to establish that in furtherance of the confession made by the appellant, the recovery was effected in the presence of the panchas. The prosecution, accordingly, failed to prove recovery through legal means.

12. As for identification of M.Os.1 to 5, it is clear from the testimony of P.W.1 – one of the sons of the deceased, that M.Os.1 to 5 were shown to him during trial. This is contrary to the procedure prescribed by Rule 35 of the Criminal Rules of Practice (for short ‘the Rules’), which read as under:

“35. Identification of property:-

(1) Identification parades of properties shall be held in the Court the Magistrate where the properties are lodged;

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not allowed to communicate with the witness not yet called.”

As the prosecution failed to follow the procedure envisaged under Rule 35 of the Rules, it failed to prove that – M.Os.1 to 5 - the jewellery allegedly recovered from the possession of the appellant belong to the deceased.

13. For all the aforementioned reasons, we are of the opinion that the prosecution has not only failed to prove that the death was homicidal, but also that the appellant is responsible for causing death of the deceased.

14. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/sole accused in judgment under appeal are set aside. The appellant is acquitted of all the offences with which she was charged. The fine amount, if any, paid by her shall be refunded to her. The bail bonds of the appellant shall stand cancelled to enable her to surrender before the Jail Superintendent, Central Prison,

Warangal, for completing the legal formalities for her release, if she is not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

25th September, 2018

GHN

