

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

CRIMINAL APPEAL No.647 of 2011

Between:

Bathula Ademma

..Appellant/ Accused

and

The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

JUDGMENT PRONOUNCED ON: 05th March, 2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

M.GANGA RAO, J

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

+ CRIMINAL APPEAL No.647 of 2011

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Bathula Ademma

..Appellant/ Accused

Vs.

\$ The State of Andhra Pradesh,
 represented by its Public Prosecutor,
 High Court of Judicature at Hyderabad

..Respondent

! Counsel for the appellant/accused: Mr.K.Srinivas

Counsel for the respondent: Public Prosecutor (A.P.)

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>Head Note:

? Cases referred:

1. AIR 1983 SC 810
2. AIR 1988 SC 2852
3. (2013) 5 SCC 705

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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THE HON'BLE SRI JUSTICE M.GANGA RAO

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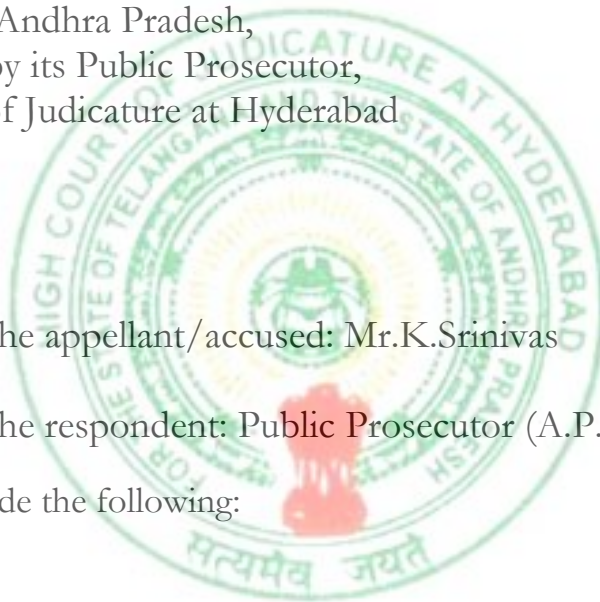
The State of Andhra Pradesh,
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High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant/accused: Mr.K.Srinivas

Counsel for the respondent: Public Prosecutor (A.P.)

The Court made the following:



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

The sole accused in Sessions Case No.594 of 2010 on the file of learned II Additional Sessions Judge, Guntur filed this Criminal Appeal against judgment, dated 18.05.2011, whereunder she was convicted for the offence punishable under Section 302 I.P.C. and sentenced to undergo imprisonment for life and also to pay a fine of Rs.100/- and in default of payment of fine, to undergo simple imprisonment for one month.

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

On 14.06.2010, when Bathula Raghavulu @ Peda Raghavulu (hereinafter referred to as 'the deceased') was proceeding on a luna moped to attend the death ceremony of his relative at Ankireddypalem village, he fell down accidentally at Naidupet and thereby, he received an injury to his spinal cord. He was immediately shifted to the Government General Hospital, Guntur, in 108 ambulance and thereafter, to Siddardha Poly Clinic belonging to Dr.T.B.Raju at Indira Nagar, Guntur, where free treatment was being given to the poor people. L.W.8 – Dr.Gatike Ganesh attended on the deceased daily for his cervical region nerve damage and also both upper and lower limbs not functioning properly due to the accidental fall from the moped. The deceased was confined to his bed in the hospital. The wife of the deceased - the accused,

along with her daughter – P.W.1, were attending on the deceased in the said hospital by looking after his needs. The deceased was in the habit of abusing his wife i.e., the accused, and daughter – P.W.1, suspecting the fidelity, whereby the accused was vexed with the deceased and was waiting for an opportunity to put an end to his life. On the night of 13.07.2010, the deceased abused the accused and his daughter – P.W.1 in filthy language. In the midnight time at 0.44 hours, taking advantage of P.W.1 going to bath room inside the hospital, the accused dragged the deceased from his bed forcibly making him fall down on the floor by the side of his bed, sat on his chest and pressed his throat. When P.W.1 went to the rescue of the deceased, she was thrown away by the accused. At the same time, P.W.3 went to the deceased on hearing the sound, but the accused warned him not to interfere and, therefore, he went away without interfering and made a phone call to L.W.6 – Patibandla Kavitha. L.W.6 along with her husband - L.W.7 – Patibandla Vasudevaraj came to the hospital and they all went to the deceased, noticed him dead and lying on the floor by the side of his bed. L.W.3 – Bathula Narendra Babu, who was the son of the deceased, on coming to know of the death of his father, came there and noticed him dead. P.W.2 - the son of Dr.T.B.Raju of Siddardha Poly Clinic, who came to know about the death of the deceased, went to the hospital and after noticing the dead body, he went to Lalapet Law and Order

Police Station at 3 a.m. on 14.07.2010 and preferred a report. P.W.8 registered it as a case in Crime No.140 of 2010 under Section 302 I.P.C. at 3 a.m. on the same day and sent express F.I.Rs. to all the concerned officers, including P.W.10, who immediately took up investigation into the case. On the said day i.e., 14.07.2010, P.W.10 inspected the scene of offence in the presence of L.W.10 – Avutu Veera Srinivasa Reddy and P.W.6 at 5.00 a.m., got an observation mahazar of the scene drafted and attested by them, prepared a rough sketch of the scene and L.W.9 – Bheemavarapu Vemareddy took the photos of the scene. On the same day, P.W.10 held inquest over the dead body of the deceased from 6.30 a.m. to 9.30 a.m. in the presence of L.W.10, P.W.6 and L.W.12 – Shaik Basha at the scene of offence and sent the dead body to post mortem examination to L.W.13 – Dr.C.G.V.Daniel. L.W.13, who conducted autopsy over the dead body of the deceased, issued post mortem examination report opining that the deceased died due to asphyxia as a result of throttling, along with spinal injury. P.W.7, who treated the accused and issued the wound certificate opined that the injury found on her is simple in nature. On the same day, P.W.10 arrested the accused and sent her for judicial remand to the Court.

3. Based on the charge sheet, the Court below framed the following charge.

“That you on the 13th day of July, 2010 at about 00.40 hours in Siddardha Poly Clinic, Indira Nagar, 25th lane, Nallacheruvu, Guntur did commit murder by intentionally or knowingly to wit – “In the midnight at about 00.40 taking advantage of Bathula Annamma (L.W.2: your daughter) went to bath room inside the hospital, you dragged the deceased:Bathula Raghavulu (Your husband) from his bed forcibly making him fell down on the floor by the side of his bed and sat on his chest, pressed the throat and when L.W.2:Bathula Annamma went to the rescue of deceased:Bathula Raghavulu, she was thrown away by you and thus murdered your own husband as he was in the habit of suspecting you and your daughter” and that you thereby committed an offence punishable under Section 302 of the Indian Penal Code 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 10, got marked Exs.P-1 to P-12 and produced MOs.1 to 3. 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 as noted hereinbefore.

5. At the hearing, Mr.K.Srinivas, learned counsel for the appellant/accused, has submitted that P.Ws.1 and 3 were cited as eyewitnesses, and P.W.1 having turned hostile, the solitary testimony of P.W.3 was not corroborated by any other evidence and that the conduct of P.W.3 is so unnatural that he did not intervene and try to rescue the deceased, which fact by itself falsifies

his version that he was an eyewitness to the alleged offence. In support of his submission, the learned counsel has placed reliance on the judgment of the Supreme Court in **Ramji Suriya vs. State of Maharashtra**¹ and **Kochu Maitheen Kannu Salim vs. State of Kerala**².

6. Opposing the above submission, the learned Public Prosecutor (A.P.) has submitted that P.W.1, being the daughter of the accused and the deceased, turned hostile, but P.W.3 – the Compounder, was an independent witness who had no axe to grind against the accused and that therefore, his evidence is reliable and trustworthy. That his evidence being independent, it does not require any corroboration and is sufficient for convicting the accused and that the Court below has rightly convicted the accused for the offence punishable under Section 302 I.P.C. He has further argued that mere non-intervention by P.W.3 to prevent the accused from committing the offence cannot be the sole factor for rejecting his evidence as the nature of reaction to a situation varies from person to person, depending upon his nature and the circumstances, and that on the facts of the present case, the failure of P.W.3 to intervene cannot be viewed as unnatural.

¹ AIR 1983 SC 810

² AIR 1988 SC 2852

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

8. Shorn of needless discussion, we would like to discuss the evidence of the alleged eyewitnesses as the case of the prosecution would have to stand or fall on their evidence.

9. P.W.1 is the daughter of the accused and the deceased. She was about 17 years of age when her father met with unnatural death. She denied having given a statement to the Police. Therefore, she was treated as hostile. However, her statement was marked as Ex.P-1. As she denied giving such statement, her evidence is of no value to the prosecution.

10. The only other eyewitness is P.W.3. He was a Compounder in the hospital, in which the deceased died. He categorically deposed that he was on duty in the hospital at the time when he heard the cries of the deceased, who was admitted in the hospital on 20.06.2010. That on hearing those cries, he went to the free-ward, where the deceased was the only inpatient and found him lying on the ground and the accused by his side and that he also found the accused pressing the neck of the deceased and the latter crying. That when the witness questioned the accused, she asked him not to intervene as he was no way connected with their

affairs. That he went to bring P.W.4 and L.W.6, who are also the staff members in the hospital and he brought them within 15 minutes and they all found the deceased dead. He further deposed that he along with L.W.6 telephoned P.W.2 and informed him about the incident. In the cross-examination, P.W.3 denied the suggestion that the accused did not throttle the neck of the deceased and that the deceased died due to his earlier disease. He also denied the suggestion that he was not present at the time of the inquest and that the accused did not kill the deceased. Further, in the cross-examination, while admitting that he did not try to pull the accused away from the deceased, P.W.3 deposed that P.W.1 was also near the accused and the deceased by the time he went there and that she was trying to prevent the accused from pressing the neck of the deceased.

11. The testimony of P.W.3 was supported by P.W.4 - the Aaya in the hospital. She deposed that on the date of the death of the deceased, P.W.3 came to her and woke her up at about 12.00 midnight and informed her that the accused was quarrelling with her husband – the deceased and that she was also throttling the neck of the deceased with her hands. She further deposed that when herself and P.W.3 came to the free-ward and the accused asked them to go away and that P.W.1 was also present there and she was weeping at that time. She also deposed that she instructed

P.W.3 to telephone L.W.6 and on being informed on phone, L.W.6 came along with her husband L.W.7 and all of them found the deceased dead. That P.W.3 also telephoned P.W.2 – the Doctor, upon which P.W.2 came to the hospital and then, went to the Police Station for giving a report. In the cross-examination, it was suggested to P.W.4 that P.W.3 did not come and inform her anything and that she was deposing falsely which was denied by the witness.

12. P.W.2 – the Doctor, who was running Siddardha Nursing Home at Guntur, in which the death took place, deposed that on 14.07.2010, he received a phone call at about 1.30 in the night about the death of the deceased from his hospital staff and then, he went to the hospital and found the dead body of the deceased on the floor in the free-ward and that the accused and the hospital staff were also present in the hospital. He further deposed that thereafter, he went to the Police Station and gave Ex.P-2 report to the Police and that the Police examined him. He also deposed that he found swelling on the neck of the deceased. In the cross-examination, he admitted that he had not witnessed the actual death of the deceased and only on knowing about the same through telephone, he came and saw the dead body.

13. P.W.9 – the Assistant Professor, Forensic Medicines, Guntur Medical College, deposed that L.W.13 – Dr.C.G.V.Daniel, conducted post mortem examination over the dead body of the deceased and issued Ex.P-10 - the post mortem certificate and that as per Ex.P-10 the following injuries were found on the dead body of the deceased.

“1. Abrasion of 2 X 2 c.m. present over right side of forehead.

2. An abrasion of size 3 X 2 c.m. placed diagonally over the front of middle of neck.

3. An abrasion of size 0.5 X 0.25 c.m. present over left side of neck, 2 c.m. below and left to injury No.2.

4. An abrasion of size 0.5 X 0.25 c.m. present over left side of neck, 4 c.m. left to the middle of neck and 3 c.m. below left jaw line.

5. After reflection of skin of neck the underlying muscles are deeply contused. Hyoid bone is not fractured and found to be intact.

6. Fracture dislocation of C4-C5 cervical vertebra with contusion present over adjoining muscles and tissues.”

As per Ex.P-10, L.W.13 opined that the injuries were ante-mortem in nature; that the death occurred about 6 to 12 hours prior to the post mortem examination and that the cause of the death was due to asphyxia as a result of throttling along with spinal injury. P.W.9 deposed that the aforementioned injuries were sufficient in the normal course to cause death. The hands of the accused were shown to the witness during recording of his evidence

and on seeing the same, he opined that the injuries noted in the post mortem certificate are possible by throttling by such hands. In the cross-examination, P.W.9 admitted that the injuries in Ex.P-10 are possible by the neck of the deceased coming into contact with a blunt object, by force. He, however, volunteered to say that the hands of the accused are also blunt objects. To a query put by the Court, the witness opined that the injuries are more probable by throttling with hands than coming into contact with a single blunt object.

14. As could be seen from the suggestions put to P.W.9 by the defence, it sought to explain away the injuries on the neck of the deceased as by his coming into contact with a hard/blunt object in the process of falling from the bed. P.W.9, while admitting that the injuries may be possible if the neck of the deceased came into contact with a blunt object by force, he, however, expressed the opinion that the death due to throttling the neck with hands was more probable than coming into contact with a single blunt object. It is not the pleaded case of the defence that any blunt object was found at the place, where the deceased allegedly fell from the hospital bed. Significantly, the accused received a laceration of 1 X 0.5 c.m. over the ring finger of her right hand. In Ex.P-7 – the wound certificate issued by P.W.7 - the Doctor opined that the said injury, which is simple in nature, might have been caused with a

blunt object. The accused took the stand in her examination under Section 313 Cr.P.C. that when she tried to pour water in the mouth of the deceased and in the process of opening his mouth, her finger sustained injury. Obviously, the accused has taken the stand based on the opinion of P.W.7 that such an injury may be possible due to the biting of the teeth by a person. The Doctor's opinion cannot be taken as the sole criterion, ignoring the evidence of P.Ws.1 to 4. When we examine the credibility of the testimony of P.W.3, we do not find any reason to reject the same. It was not even suggested to him that he had any past acquaintance with the accused and the deceased, much less any ill-will against the accused. Being a Compounder and on night duty, his presence in the hospital at the time of the incident was quite natural. His version was amply supported by the evidence of P.W.4, who arrived at the scene on being informed by P.W.3.

15. The learned counsel for the appellant/accused has, however, submitted that the conduct of P.W.3 was highly unnatural as he failed to intervene when he allegedly saw the accused throttling the neck of the deceased. To buttress his submission, he relied upon the judgment in **Kochu Maitheen Kannu Salim** (2 supra). On a reading of the said judgment, we are at a loss to know how the same is of any assistance to the accused. In that case, according to the version of P.W.2, the deceased came to his shop, requested him

to close it and then both of them went to the shop of P.W.3 to purchase plantains and thereafter both of them were walking on the road and at that time, the murder of the deceased took place. P.W.2 further deposed that on seeing the occurrence, he went near the intersection of the road and shouted that Salim and Jalal had given knife blows to the deceased. Considering those facts, the Supreme Court held that being a close friend of the deceased, P.W.2 would not have left the former like that and gone near the junction shouting that Salim and Jalal had given knife blows to the deceased but would have really taken him to his aunt's place which was nearby or to a hospital for treatment or gone to the Police Station for lodging a complaint and that without doing any of those things, the witness just disappeared till the next day evening. On these facts, the Supreme Court discredited the said conduct as unnatural. Unlike in **Kochu Maitheen Kannu Salim** (2 supra), in the instant case, P.W.3 is a stranger and he had no attachment with the deceased. Moreover, he was just about 17 years of age when the incident occurred and we cannot expect a person of that age to take the initiative to prevent the offence. As noted hereinbefore, he stated that when he saw the accused throttling the neck of the deceased, P.W.1 – the daughter of the accused was trying to pull her mother from the deceased to save him. In that situation, he ran towards P.W.4 and other staff members to inform

and bring them to the scene of offence. Hence, we find the reaction and conduct of P.W.3 very normal and natural.

16. In **Shivasharanappa vs. State of Karnataka**³, the Supreme Court held that the behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. That, expectation of uniformity in reaction of witnesses would be unrealistic, but the Court cannot be oblivious to the conduct which is too unnatural even taking into account the unpredictability of human conduct and lack of uniformity in human reaction, and that the Court must determine whether in the circumstances of the case, the behaviour of the witnesses is acceptably natural allowing for variations. That if the behaviour is absolutely unnatural, the testimony of the witnesses may not deserve credence and acceptance.

17. In the instant case, the aforementioned circumstances do not suggest that the behaviour of P.W.3 was absolutely unnatural. On the contrary, such behaviour was quite probable, considering the age of the witness and also the fact that P.W.1 was already intervening in order to save the deceased. Moreover, P.W.3 is an absolutely independent witness and had no reason to falsely implicate the accused. As noted above, it was not even suggested to him that he had any reason to speak falsehood. The suggestion of

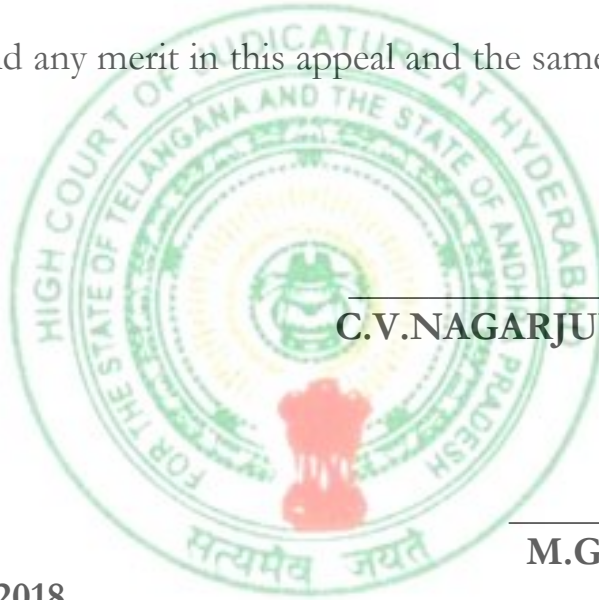
³ (2013) 5 SCC 705

the defence that the death occurred due to the previous injuries and also the deceased falling from the bed cannot be accepted even with a pinch of salt for, by the fall from the bed, five injuries on the neck, which include deep contusions to muscles, would not have been possible. The undeniable presence of the accused at the time of the occurrence squarely attracts Section 106 of the Indian Evidence Act, 1872, which throws burden on the person to explain the fact which is especially within his/her knowledge. While taking the incredible stand that due to the hard/blunt object coming into contact with the neck, the deceased sustained those injuries, the accused failed to discharge the burden cast on her under the aforementioned provision of law.

18. As regards the judgment in **Ramji Surjya** (1 supra) relied upon by the learned counsel for the accused, the Supreme Court while holding that a conviction may be recorded against the accused based on the testimony of solitary eyewitness, however, held that prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of the solitary witness, particularly, where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill-will is suggested. As noted hereinbefore, P.W.3 is no way connected with the accused and the deceased and no ill-will can be attributed to him. His testimony, as held earlier,

was amply corroborated by the evidence of P.Ws.2 and 4. Being an independent witness, even his sole testimony can constitute the basis for conviction of the accused. But in the instant case as noted hereinbefore, his evidence was amply corroborated by P.Ws. 2 and 4.

19. For all the aforementioned reasons, the Court below has rightly convicted the appellant/accused for the offence punishable under Section 302 I.P.C. and appropriately sentenced her. Hence, we do not find any merit in this appeal and the same is, accordingly, dismissed.



C.V.NAGARJUNA REDDY, J

M.GANGA RAO, J

05th March, 2018

Note: L.R. copies to be marked.

(B/o)

GHN

