

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Crl.A.No.621 of 2011

Date: 26.02.2018

Between:

Gangavarapu Grace Mani, W/o.Mark,
Aged about 29 years, Occ; ANM,
R/o.Inamanamellur village,
Ongole Mandal, Prakasam District

...

Appellant

And

The State through S.H.O.,
P.S. Maddipadu, Prakasam,
rep. by its Public Prosecutor,
High Court of A.P.,
Hyderabad

...

Respondent

Counsel for the Appellant : Smt.A.Gayatri 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.31 of 2010 on the file of the learned Principal Sessions Judge, Ongole, filed this Appeal against Judgment, dated 27.05.2011, convicting her for the offences punishable under Sections 302 and 201 IPC and sentencing her to undergo;- (i) Imprisonment for life and also to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for a period of two months for the offence under Section 302 IPC and (ii) Rigorous Imprisonment for a period of two years and also to pay a fine of Rs.250/-, in default, to undergo Simple Imprisonment for a period of one month for the offence under Section 201 IPC.

The case of the prosecution, as set out in the charge sheet, is as follows:

PW.1- defacto complainant, who is a mason, is a resident of Inamanamelluru Village and he is an illiterate person. The accused is his wife. As on the date of the offence, they had two daughters- the elder one being four-year-old by name Asha Deepika @ Anil Preethi and the

younger one being one-and-a-half-year-old by name Nandusri @ Anvitha Preethi (hereinafter referred as 'deceased Nos.1 and 2 respectively'). The accused studied intermediate and did ANM course. She wanted to do job and marry an employee but due to her parents' pressure, she married PW.1, who is their relative. After marriage, she worked as a nurse in a Nursing Home at Ongole in spite of the objection from PW.1. After giving birth to her elder daughter, the accused joined as the Mandal Resource Person, Maddipadu Mandal under Velugu Project. Later, she was transferred to Korisapadu and for her convenience, PW.1 shifted the family to Medaramitla Village. While so, the accused gave birth to her younger daughter. As the accused was coming late to the house, PW.1 suspected her fidelity, chastised her and informed the same to her parents. The parents of the accused made her resign the job and set up a cool drink shop at Thovagunta for their livelihood. The accused again applied for the post of Field Assistant and secured it at Inamanamelluru. However, PW.1 did not allow her to join. Out of frustration, the accused along with the children left to Vijayawada without informing anyone. After some days, she informed the same to LW.16- Edluri Israel

through phone. PW.1 sent LW.16 to bring the accused and the children back. Accordingly, the accused along with the children returned home and PW.1 set up the family at Throvagunta. While so, PW.1 received the Recurring Deposit amount of Rs.15,000/- and two cheques for Rs.5,000/- each from Pearls Company. The accused demanded PW.1 to deposit the same in the names of the children, with regard to which an altercation took place between them. Hence, the accused once again left to Vijayawada leaving the children along with the cash and cheques at the house of LW.18- Patibandla Aruna. PW.1 along with his relatives made a vain attempt to find out the whereabouts of the accused and the children. Two weeks later, on coming to know that LW.18 brought the children to his parents-in-law's house, PW.1 went there and brought his children back. After some days, the accused telephoned to PW.4. On the basis of the cell number, PW.1 along with PW.4 and LW.16- Israel traced the whereabouts of the accused, went to the private hospital at Vijayawada, where she was working as a nurse and requested her to come back. The accused refused to accompany PW.1 stating that she is unwilling to lead marital life with him and that if he forcibly

takes her back, she will kill him and also the children. Thereafter, the accused, having felt that the children have become stumbling block to lead her life as per her wish, bought a pesticide tin to administer the same on them. She telephoned to PW.4, informed him that she would like to return home and asked him to come to Vijayawada. On that, PW.1 along with PW.4 and LW.17- Butti Moshe went to Vijayawada and brought her to Inamanamelluru.

On 24-04-2007, after breakfast, the children slept. PW.1 went to Throvagunta for mason work and PW.3- his mother, went to cooly work. At about 12.30 p.m., the children woke up. The accused found LW.2- Gangavarapu Bhaskara Rao and L.W.8- Rayapati Peda Guravaiah playing cards in the verandah. She chastised and sent them away. Then she mixed pesticide in butter-milk rice and fed it to the children. Thereafter, deceased No.2 slept in a cradle and deceased No.1 went out to play. At about 4.30 p.m., the accused found deceased No.2 dead in the cradle. In order to cause disappearance of evidence, she went to the fields and threw away the pesticide tin. After returning home, she made a call to PW.6- sister of the accused and informed that

deceased No.2 fell sick and asked her to inform the same to PW.1. PW.6 went to the place where PW.1 was working and gave the information. PW.1 immediately rushed to Inamanamelluru on a motor bike. On his arrival, the accused, along with deceased No.1 and by keeping deceased No.2 on her shoulder as if she was alive, boarded his bike and asked him to proceed to Throvagunta Village where they left deceased No.1 in the house of PW.6 and took deceased No.2 to LW.21- private medical practitioner, who advised them to consult an expert. Then they went to the hospital of LW.22- Doctor, who examined deceased No.2 and declared her dead. They returned to Inamanamelluru and buried the dead body of deceased No.2 on that night itself. After burial, PW.1 questioned the accused for the real cause of death. As she did not give proper answer, he suspected her.

On 25-04-2007, at about 5.30 a.m., LW.13- Edluri Suneetha, telephoned to the accused and informed her that deceased No.1 fell ill and that they admitted her in Chandamama Hospital, run by PW.10- Doctor. The accused informed the same to PW.1. PW.1 along with PW.4 and the accused rushed to the hospital and found deceased No.1 in

the ICU. On 26-04-2007, at about 9.00 a.m., PW.1 along with PW.4 went to the house to take bath. At about 10.00 a.m., the condition of deceased No.1 became critical. PW.10 examined and found enlargement of liver and advised X-ray and Scanning. After the X-ray, while accused and LW.19-Nagamani were taking deceased No.1 for scanning, she breathed her last. Then they brought her and showed her to PW.10, who examined and declared her dead. PW.10 advised them to take away the dead body. LW.2-Gangavarapu Bhaskara Rao informed the same to PWs.1 and 4. Immediately, PW.1 rushed to PW.10, expressed his suspicion over the accused and requested for Postmortem examination. PW.10 refused to do Postmortem and advised him to give police report, if he has any doubt regarding the cause of death of his daughter. On hearing the same, the accused threatened PW.1 that she would commit suicide, if he insists for Postmortem examination. But, PW.1 gave a report at Ongole I Town Police Station at 4.00 p.m. The Sub-Inspector of Police, who came to the Police Station at 6.30 p.m., advised him to give report at Maddipadu Police Station on the point of jurisdiction.

On receipt of the report, PW.15- Sub-Inspector of Police, Maddipadu Police Station, registered the same as Crime No.53 of 2007 under Section 174 Cr.P.C., against the accused, submitted the FIR and its copies to all the Officers concerned and took up the investigation. During the investigation, on 27-04-2007, PW.15 along with the inquestdars- PW.9, LW.28- Rayapati Subba Rao and LW.29- Palaparthi Peddanna proceeded to the Government Hospital Mortuary Room, Ongole, and at about 11.00 a.m., held inquest over the dead body of deceased No.1 in their presence under the cover of Ex.P.3- Inquest Report. During inquest, he examined and recorded the statements of PWs.1 to 3, 6 & 10 and LW.12- Bojepalli Sarojini, LW.13- Edluri Sunitha, LW.19- Butti Nagamani, LW.21- Paleti Rathnam and LW.22- Dr.Mandava Venkata Subbaiah under Section 161 Cr.P.C. He gave requisition to PW.12- Civil Assistant Surgeon for autopsy of the dead body of deceased No.1 through LW.35- Constable. Later, he visited Chandamama Hospital, Ongole, and examined and recorded the statement of PW.10- Doctor. At 4.00 p.m., he visited the scene of offence situated at the house of PW.1 where he prepared Ex.P.17- rough sketch and Ex.P.4- Scene

Observation Report in the presence of mediators- PW.9 and LW.28- Rayapati Subba Rao. He has also examined and recorded the statements of LW.4- Gangavarapu Gangaiah, LW.5- Gangavarapu Yasoda, LW.6- Gangavarapu China Kotaiah, LW.7- Gadde Jadson and LW.8- Rayapati Peda Guravaiah.

PW.12- Civil Assistant Surgeon, who conducted autopsy over the dead body of deceased No.1, preserved the stomach contents, liver, kidney, hair and nails for analysis.

During the course of further investigation, on 28.04.2007, PW.15 sent a requisition to PW.14- Mandal Revenue Officer for exhumation and inquest over the dead body of deceased No.2 and also a requisition to PW.13- Civil Assistant Surgeon for autopsy. At 10.00 a.m., he along with mediators- PW.9, LW.28- Rayapati Subba Rao, LW.29- Palaparthi Peddanna proceeded to the burial ground where deceased No.2 was buried and in their presence, LW.24- Yadala Elisha and LW.25- Edluri Ramaiah disinterred the dead body under a cover of Ex.P.5- Scene Observation report duly attested by PW.9, LW.30- Yedluri Mariamma and PW.31- Yadala Yallamandamma. After exhumation, at about

1.30 p.m., PW.15 held inquest over the dead body of deceased No.2 in the presence of PW9, LW.30- Yadhuri Mariamma, LW.31- Yadhala Yallamandamma and LW.32- Bhupati Nageswara Rao under the cover of Ex.P.6- Inquest report duly attested by them. During inquest, PW.15 examined and recorded the statements of the accused, PWs.1, 2 and LW.9- Gangavarapu Yebu.

PW.13- Civil Assistant Surgeon conducted autopsy over the dead body of deceased No.2 on the spot and preserved the stomach contents, intestines, liver, kidney, hair and nails for the sake of analysis.

Then, PW.15 examined and recorded the statements of LW.19- Butti Nagamani, LW.24- Paleti Rathnam, LW.22- Dr.Mandava Venkata Subbaiah and PW.10- Doctor under Section 161 Cr.P.C. PW.15 forwarded the incriminating materials preserved by PWs.12 and 13 to APFSL, Hyderabad, for analysis.

The Assistant Director, APFSL, Hyderabad, issued report, *vide* File No.Tox/1686 dated 10-07-2007, opining that Organophosphate- an insecticide poison was found in the

stomach contents and kidney of deceased No.1 and stomach contents, liver and kidney of deceased No.2.

After receipt of the analysis report, PW.12 issued Ex.P.12- Postmortem Certificate opining that deceased No.1 appears to have died of organophosphorous poisoning. PW.13 also issued Ex.P.15- Postmortem Certificate opining that deceased No.2 died of organophosphorous poisoning.

On receipt of the Postmortem Certificates, on 19.08.2008, PW.15 altered the Section of law from Section 174 Cr.P.C., to Section 302 IPC and submitted express FIR and its copies to all the Officers concerned. On receipt of a copy of the FIR, PW.16- Inspector of Police, Ongole Rural Circle, took up the investigation. He verified the investigation made by PW.15 and examined and recorded the statements of PW.7, LW.11- Rayapati Jakraiah, LW.15- Bojepalli Koteswara Rao, LW.16- Edluri Israel, LW.17- Butti Moshe, LW.18- Patibandla Aruna, LW.24- Yadala Elisha, LW.25- Edluri ramaiah and LW.26- Polukonda Rangamma under Section 161 Cr.P.C. Though the accused committed the offence, during interrogation, she denied the allegation. Hence, PW.16 forwarded PW.1 and the accused to APFSL,

Hyderabad, for polygraph test (lie detection test). LW.38- Assistant Director, APFSL, who conducted the lie detection test on the accused, issued opinion that “the accused committing the crime under investigation appears to be true” and that “PW.1 has not involved in committing the crime under investigation appears to be true.”

On 26-06-2008 at 8.00 a.m., PW.8 met the accused on the way to Ongole. After alighting from the bus, they had a chat during which, PW.8 questioned her about the veracity in the rumours spread about the deaths of deceased Nos.1 and 2. Then the accused burst out and confessed before her that she had committed the offence. When PW.16 examined PW.8, she revealed the entire episode. On receipt of polygraph test report, and extra judicial confession of the accused before PW.8, PW.16 confirmed that the accused is the real offender in the crime. On 25-07-2008, he along with mediators- PW.11 and LW.34- Kolakaluri Ramesh proceeded to the Government Head Quarters Hospital, Ongole, and arrested the accused at 10.30 a.m., at the main gate of the hospital under a confessional mahaazar. Based on her confession, at about 11.30 a.m., they proceeded

to Inamanamelluru Village and searched for the pesticide tin but could not find the same. On completion of the investigation, PW.16 laid a charge sheet against the accused under Section 302 IPC.

As the plea of the accused was one of denial, she was tried by the Court below. During the trial, the Prosecution has examined PWs.1 to 16 and got Exhibits.P.1 to P.24 marked. No evidence was adduced on behalf of the defence.

On appreciation of both oral and the documentary evidence, the lower Court has convicted the accused and sentenced her in the manner as indicated above.

Smt.A.Gayathri Reddy, learned Counsel for the appellant/accused, has submitted that the Court below has committed a serious error in finding the accused guilty of the offence under Section 302 IPC, even though the Prosecution had failed to prove the motive and the crucial links in the chain of circumstances. Alternatively, she relied on Ex-P1 – report given by PW-1 and submitted that as the accused has committed the offence in anger, the acts committed by her at

best, may constitute culpable homicide, not amounting to murder.

In support of her submissions, the learned Counsel placed reliance on the following judgments:

“1.Sharad Biridhichand Sarda vs. State of Maharashtra¹.

2. Thurumella Ramesh Babu vs. State of A.P., rep. by Public Prosecutor²

3.Thumma Babul Reddy vs. State of A.P.³

The learned Public Prosecutor, on the contrary, submitted that the circumstances brought out on record by the Prosecution, clearly proved the guilt of the accused beyond all reasonable doubts. He further submitted that the evidence on record clearly proves the motive of the accused and that, as the facts of the case show that there was no probability or possibility of someone else causing the death of the two children of the accused, or the deaths taking place in any manner other than that set up by the prosecution, the Court below has rightly drawn the conclusion that it is the accused alone, who is responsible for causing the death of her two children.

¹ AIR 1984 SUPREME COURT 1622

² 2010 (3) ALT (Crl.) 197 (DB) (AP)

³ 2011 (1) ALT (Crl.) 250 (DB) (AP)

As regards the alternative submission of the learned Counsel for the accused, the learned Public Prosecutor submitted that the evidence on record shows that the accused has planned the commission of offence well in advance, by purchasing pesticide in a shop at Vijayawada and executed her plan; that, her conduct clearly shows that it was a pre-meditated act on her part and that, therefore, the offence committed by her does not fall in any of the five exceptions of Section 300 I.P.C.

We have considered the respective submissions of the learned Counsel for both the parties and perused the material on record.

This is a case based on circumstantial evidence, where motive plays vital role. PW-1 is the husband of the accused. He is a rustic illiterate. The accused is well educated and was working as a Nurse. In his evidence, PW-1 has stated that after their elder daughter was born, the accused secured a job in Maddipadu; that she used to go to her duty from her Village every day; that as there was no proper conveyance for the accused to go to Maddipadu from that village, they

shifted the family to 'Throvagunta; that the accused used to go to Maddipadu for her work and the witness used to go to Ongole for his masonry work; that after one year, the accused was transferred to Korisapadu Village; that she used to come home at late hours; that when he questioned the accused, she informed that she was spending more time on duty; and that as he was an illiterate, he did not understand what her duties were. He further deposed that after leaving their first daughter- Asha Deepika in the house of his parents-in-law in 'Throvagunta, he shifted the family to Medarametla; that even there, the accused used to come home late; that some times, she was not returning home even during nights; that he was not happy with the conduct of the accused; that he complained the same to his parents-in-law, who called the accused and advised her to vacate the house at Medarametla and come back to 'Throvagunta; that they shifted the family to 'Throvagunta; that after five months of the birth of their second daughter, the accused sent him to work and after that, she went away from the house along with the two children; that one week thereafter, the accused made a phone call to her brother-in-law - LW-16 and informed him that she was at Vijayawada; that LW-16

informed the witness about the same; that later on, the witness and his father-in-law, sent LW-16 to Vijayawada to bring back the accused to Throvagunta and that accordingly, LW-16 brought back the accused and her children to Throvagunta. The witness further deposed that when he questioned the accused as to why she left the house without informing him, she replied adamantly that she need not inform him; that she can do whatever she likes to do; that she asked him to go to his village; that thereupon, he went to his village; that four or five days later, on the request of his father-in-law, the witness went to Throvagunta; and that he was convinced by his father-in-law to take the accused with him and stay together in Throvagunta in his old house. PW-1 further deposed that the accused has insisted him to deposit the entire amount of Rs.15,000/- available with him in the name of the two children and that when he could not meet her demand in view of the subsisting debts, the accused again left the home along with her children; that he also found the amount received from R.D. and the cheque issued by a company, missing; that, thereupon, himself, LW-16 and LW-7, searched for the accused and the children but in vain; that two weeks later, LW-18 of Maddipadu village came to

Throvagunta along with the children of the witness and informed that the accused left the children at her house and went away by saying that she will return some time later, but as she failed to turn up, LW-18 has brought the two children to his parents-in-law's house and that thereafter, on being informed by his mother-in-law, the witness went to their house and brought back his children to his village. The witness further stated that one month thereafter, on coming to know that the accused was at Vijayawada, again the witness, LW-16 and LW-17 along with others went to Vijayawada and found the accused near a hospital and requested her to come with them, but she did not agree for it. That the accused informed them that she is not going to live with PW-1 and that if she is forced to live with him, she would kill him and her children by giving poison and that so saying, the accused left the place. That on the next day, the accused contacted PW-1 on his mobile phone and informed him that if he makes any attempt to take her from Vijayawada by force, she would commit suicide and that thereafter, he along with others returned to his village. That one week thereafter, one Gadde Jadson received a phone call from the accused, informing him of her willingness to

join PW-1 and later PW-1, his father-in-law and Gadde Jadson went to Vijayawada and brought the accused to his house, where she stayed for 15 days. That during that period, she did not cook food and was quarrelling with the witness, which was informed by him to his father-in-law. That his father-in-law convinced the accused on phone and chastised her for her attitude. That the accused questioned the witness as to why he complained to her father. That on the 2nd day, the accused did not send the elder daughter- Asha Deepika to school and the witness left for his work at about 8 a.m., by leaving the accused and the children in the house. In the cross-examination, no suggestion was put to PW-1 that his testimony on the behaviour and conduct of the accused was false. Thus, the indifferent and arrogant behaviour of the accused and her repeated acts of leaving the matrimonial home along with the children, remained undisputed and her threatening PW-1 that if he attempts to take her back, she will administer poison to her two children and commit suicide as spoken to by PW.1, remained uncontraverted.

PW-4 – Gadde Jadson, resident of the same village in which the accused and deceased were living, deposed that

about 50 days prior to the death of her two children, the accused left the house. That at the instance of the father of the accused, himself, PW-1 and one Israel, went to the accused near a hospital and requested her to come back to the village, but she did not agree. That the accused informed them that if she is compelled to return to the village she will kill PW-1 and his children and that they stayed at Vijayawada for one day and returned back to their village. He further deposed that after one week, the accused contacted PW-4 and expressed her willingness to go to the house of the PW-1 and that thereafter, the witness went to Vijayawada and brought the accused to the house of PW-1. In the cross-examination, the witness admitted that he did not state before the police that the accused informed him that she would commit suicide if she is compelled to come to the village and that the accused contacted him on phone and expressed her willingness to come to the village. He admitted that PW-1 is a distant relative. He however, denied that he extended any help to PW-1 after the death of his children. He also denied the suggestion that he did not go to Vijayawada to bring the accused.

PW-7, a resident of the same village, stated that he knows the accused, PW-1 and the deceased and that about 20 days prior to the death of the children, the accused came back to their village and that PW-1 along with the accused and his children, used to live in one portion and they used to quarrel and when the witness asked the accused as to why she was quarrelling with PW-1, she told him that she was not liking her husband and that, therefore, there were problems between them. That the accused further informed him that she wanted to live freely on her own, but her children have become obstacles. In his cross-examination, he stated that he was not examined by the police immediately after the death of the children; that, police came to him six months after the death of the children and that he did not go to the police to inform them as to what the accused has told him. He denied the suggestion that the accused has never informed as spoken by him in his chief examination and that he is deposing false.

No doubt, it was suggested to PW-4 that he did not go to Vijayawada to bring the accused and to PW-5 that he was deposing falsehood. The fact, however, remains that the

defence has not suggested anything to either of these two witnesses to falsify their testimony, to the extent of the accused leaving her matrimonial house and staying in Vijayawada before coming back to the village. No suggestion was put to these witnesses that they had any motive to speak falsehood against the accused.

A careful scrutiny of the above discussed evidence would clearly reveal that the accused was unhappy to live with her husband PW-1 and was behaving in an indisciplined manner, by frequently leaving the matrimonial house along with children and staying at Vijayawada and she has even sent her children back to the village and stayed alone at Vijayawada. This undisputed conduct of the accused clearly reflects her hatred towards PW-1 and leading wavered life, evidently for the reason that she was not liking PW-1 who was an illiterate and eking out his livelihood as a mason. These reasons obviously made the accused develop motive to get rid of her children, so that she can lead her own life away from her husband. Therefore, in our opinion, the prosecution has succeeded in establishing the motive of the accused to kill her two children.

As regards the circumstantial evidence placed by the prosecution, PW-1 has categorically stated about the events that have transpired on the fateful days. He has deposed that two days after the father of the accused chastised the latter, the accused has stopped her elder daughter Asha Deepika from going to school, that PW-1 has left his house at about 8 a.m. on his work, leaving the accused and the children in the house. He has further deposed that his brother PW-2 is living in one portion of the same house in which, he along with the accused and children was living and that about 5.30 p.m., while he was attending to his work at Throvangunta, PW-6, his sister-in-law, came to inform him that his wife was requiring his presence urgently; that he took the motorcycle of one Devadanam and went to his village and after he entered the village, he saw the accused coming in opposite direction with the body of his younger daughter on her shoulder by covering it with a towel and by holding the hand of their elder daughter. That when he questioned the accused as to what happened, she asked him to turn the vehicle and then after he did so, she sat as a pillion rider with the younger daughter on her shoulder and kept their elder

daughter in front of him and thereafter, the accused informed PW-1 that she gave curd rice to the younger daughter and kept her in cradle made with a saree, but after some time, she noticed that there were no movements in her. That, when PW-1 told her that they may go to a local doctor, she asked him to proceed to Throvagunta, that after reaching Throvagunta, she asked him to take her to PW-6's house and on the way to the house of PW-6, he saw a hospital of one RMP doctor by name Dr.Ratnam and stopped his vehicle. That, the said doctor tested the eyes of his younger daughter by focussing torch and asked them to take her to a better hospital as he was unable to diagnose the problem and that they asked their daughter Asha Deepika to go to the house of PW-6 and proceeded to the hospital of one Dr.Venkata Subbaiah, LW-22 and after examining the younger daughter, the doctor informed him that the child was brought dead. That, they took the dead body to the village and on the same night, during the midnight at about 1.30 a.m., they buried the dead body in the presence of their relatives. The witness further deposed that about 5.30 a.m., the accused received a phone call from LW-16, informing that their elder daughter was vomiting

continuously and therefore, she was admitted in Chandamama Hospital, Ongole. That himself and the accused went to the said hospital on a motorcycle and by the time they went there, the girl was in ICU, that they saw B.Sarojini, Israel and Moshe at the hospital, and while undergoing the treatment, their elder daughter also died in the said hospital at about 11 a.m. That on coming to know about the death of his elder daughter, PW-1 went to Ongole and asked the doctor in Chandamama hospital about the cause of the death and, thereafter, he went to I Town Police Station at about 4 p.m. for giving a report, but the Sub-Inspector was not present in the police station. That after the S.I. came to the police station at about 6.30 p.m., he was asked to give report in Maddipadu police station; that when he came back to Chandamama hospital and when he was about to go to Maddipadu village, the accused asked him not to give any report and threatened to commit suicide if he gave any report and that afterwards, the witness went to Maddipadu, got the report drafted and presented the same in the police station. None of the above noted facts testified by PW-1, were disputed by the defence in his cross-

examination, except stating that PW-1 gave a false report against the accused.

PW-2, brother of PW-1, and PW-5, a friend of PW-2, are very crucial witnesses. PW-2 was residing in a portion in the same house in which the accused and PW-1 were living. He deposed that in the morning of 24.04.2007, PW-1 went to Throvagunta for mason work and the accused and her children remained in their portion, while the witness remained in his portion. He further deposed that he sat outside of his portion till 9 a.m. and then PW-5 came to his house and they played cards for some time. He further deposed that the elder daughter of PW-1 was a school going child, but on that day, she remained at the house and when he questioned her as to why she remained at the house, she informed that her mother asked her to stay back at the house itself. He also deposed that at about 12 noon, PW-5 went away and thereafter, he took some food and slept and when he subsequently woke up at the instance of one Jalaiah, he locked the house and gave keys to the accused and requested her to handover the same to his wife after she returns and he left for Ongole and that at that time, the accused was

washing clothes in front of her house. That he saw the younger daughter Nandu Sri in cradle made of saree in verandah. That when he returned to his house at 7 p.m., he found several persons gathering at the portion of PW-1 and when he questioned him, they informed that the said Nandu Sri died. He also spoke about the death of the elder daughter Asha Deepika on 26.04.2007 in Chandamama hospital.

PW-5 corroborated the evidence of PW-2 by deposing that after playing cards till 12:30 p.m., he has left the latter's house as he wanted to sleep and that at that time, he saw the accused taking her children into the house and closing the door. Nothing significant could be elicited from the cross-examination of these two witnesses to falsify their presence. From the evidence of PWs-1, 4 and 5, it could be safely concluded that on 24.04.2007, after PW-1 left his home on his coolie work, the accused and the children remained in their house. Thus, the accused had the exclusive custody of the two children. It is also clear from their evidence that at the instance of the accused, her elder daughter Asha Deepika did not go to school and remained at home. That the cause of death is due to poisoning is amply proved by Ex.P-10 –

preliminary post-mortem certificate and Ex.P-12 – final opinion on the post-mortem of G.Asha Deepika and Ex.P-14 – preliminary post-mortem certificate and Ex.P-15 – final opinion on the post-mortem of Nandu Sri and also, as spoken by PWs-10, 12 and 13, the doctors who conducted post-mortem on the two deceased respectively. No suggestion was put by the defence to any of these prosecution witnesses that either the death was not due to poisoning or that somebody else might have administered poison. No doubt, the source from which the accused secured poison could not be proved by the prosecution. But being in exclusive custody of the two deceased children at the relevant time, the facts relating to the cause of their death are in the exclusive knowledge of the accused. Therefore, under Section 106 of the Indian Evidence Act, the burden lies on the accused to explain the circumstances leading to the death of the deceased. As noted hereinbefore, neither any suggestions were put to the prosecution witnesses probablising the death of the two children in any manner other than the one pleaded by the prosecution, nor the accused has explained her stand when incriminating circumstances were put to her during her Section 313 Cr.P.C.

examination. All that she has answered in her Section 313 Cr.P.C. examination is that either she is not aware or false or that she has not committed the offence. When she was asked to say anything regarding the quantum of sentence, even at that stage, she did not say that she was innocent. She stated that she has nothing to say. Though the accused has a right to be silent, that would not prevent the court from drawing adverse inference from such silence, when the accused failed to explain the incriminating circumstances. (See **Ramnaresh vs. State of Chattisgarh**⁴, **Munish Mubar vs. State of Haryana**⁵ and **Raj Kumar Singh vs. State of Rajasthan**⁶).

The failure of the defence to deny the crucial facts spoken to by PW-1 about the conduct of the accused and the stoic silence she has maintained, despite the fact that she was the exclusive custodian of the children when poison was allegedly administered to them, would make the failure of the prosecution to investigate about the source of the accused securing poison, pale into insignificance.

In **Sharad Biridhichand Sarda** (1 supra), the Supreme Court held that in a case of death by poisoning,

⁴ (2012) 4 SCC 257

⁵ (2012) 10 SCC 464

⁶ (2013) 5 SCC 722

based on circumstantial evidence, the following ingredients have to be satisfied by the prosecution:

- (i) 'There is clear motive for an accused to administer poison to the deceased.
- (ii) That the deceased died of poison said to have been administered.
- (iii) That the accused had the poison in his possession and
- (iv) That he had an opportunity to administer the poison to the deceased.

In **Thurumella Ramesh Babu** (2 supra) the deceased died of nitrate poison. The prosecution alleged that the accused went to P.W.5's house at about 10.45 p.m., and gave a brandy bottle along with two disposable glasses to the latter requesting him and the deceased to consume it. P.W.10 – Doctor opined that the death must have taken place prior to 10.00 p.m. The two disposable glasses were sent for chemical examination and they were not found to contain any nitrate poison substance. The Investigating Officer has not sent the empty brandy bottle for chemical examination. The prosecution failed to prove the purchase of nitrate poison by the accused. On those facts, the Division Bench of this Court held that the prosecution failed to prove that the accused has mixed the poison in the brandy. The facts

of the present case have no similarity to that in **Thurumella Ramesh Babu** (2 supra). In the present case, both the deceased were no other than the children of the accused and they were in the latter's exclusive custody. As observed hereinbefore, she failed to probablize poisoning of the deceased by any other person and in any other manner than that pleaded by the prosecution.

In **Thumma Babul Reddy** (3 supra), the accused, allegedly, gave a liquor bottle to deceased No.1 informing him to drink the same along with deceased No.2. Both the deceased died of poisoning after allegedly consuming the contents in the bottle. This Court has reversed the conviction of the accused on the ground that the viscera of both the deceased preserved and sent to RFSL did not contain alcohol contents, though the final report of the RFSL revealed that the deceased died as a result of cyanide poison. The Court also held that though motive is not an integral part of crime, in case of death by poisoning it is one of the ingredients, which was not proved by the prosecution. This judgment is distinguishable on facts from the present case on hand and therefore, it does not help the appellant.

In the instant case, point Nos.1 2 and 4 are clearly proved by the prosecution. As regards point No.3, it has come on record that while the incident had taken place on 24.04.2007, the accused was arrested on 25.09.2008 and the prosecution alleged that as per the alleged confessional statement of the accused, she has thrown the poison tin on the outskirts of Inamanamelluru Village. Though in the absence of recovery of any incriminating material, the alleged confessional statement is not admissible in evidence, the fact remains that due to long hiatus between the date of incident and the date of arrest, there was every possibility for the accused to cause the disappearance of the poison tin. Even in the absence of the direct evidence of the accused being in possession of poison, the strong circumstances discussed above, would leave the court in no doubt that being a nurse and a person habituated to live independently by frequently going to Vijayawada, it is not difficult for her to procure poison and administer the same to her children. When all the incriminating circumstances clearly suggest beyond any pale of doubt that it is only the accused, who could have caused the death, and there is no chance of anybody else poisoning her children, mere absence of direct evidence of the accused

being in possession of poison, would not affect the case of the prosecution.

As regards the alternative submission of the learned counsel for the accused, we are not inclined to accept the same. The facts and circumstances clearly suggest that the accused has meticulously planned the murders of her two children, in order to remove the obstacles in her way of leading wavered life. The accused did not have the mercy towards her own children and committed the diabolical act of doing away with their lives. The conduct of the accused clearly suggests that she acted in the most inhuman manner, which no mother would even think in her wildest dreams, to commit such a heinous crime. The accused was driven by a strong selfish motive which made her to shed the true character of a mother who is prepared to sacrifice her own life for the sake of her children. Therefore, it is not possible to accept the submission of the learned counsel of the accused that she might have committed the offence in a fit of anger. Though in Ex.P1, PW-1 suspected that she might have done the same in a fit of anger, his opinion cannot be taken as conclusive, in the face of the evidence clearly

suggesting a premeditated act on the part of the accused to commit the murders. The gruesome act and reprehensible conduct of the accused is a blot on the concept of motherhood, which cannot be condoned.

For the aforementioned reasons, we do not find any reason to interfere with the judgment of the lower Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 26th February, 2018

Note:
LR copies to be marked.
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lur/msb



