

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

CrI.A.No.1028 of 2011

Date:31.07.2018

Between.

Andrasi Venkati,
S/o Mallaiah

.....Appellant

And.

The State of A.P, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mr. B.Hanumantha Rao

For Mr. Brahmadandi Ramesh

Counsel for the respondent: Public Prosecutor for the State of TS

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This Criminal Appeal is filed against judgment, dated 26.6.2010, in Sessions Case No.314 of 2009 on the file of the III Additional Sessions Judge, (Fast Track Court), Nizamabad, whereby he has convicted the appellant/sole accused for the offences punishable under Sections-302 and 376 IPC and sentenced him to undergo imprisonment for life for the former offence and rigorous imprisonment for seven years for the latter offence apart from imposing fine.

The case of the prosecution, as reflected from the charge sheet, is briefly stated hereunder:

On 06.10.2008 at 2.30 pm., P.W-1 lodged a complaint in Armoor Police Station stating that at about 1 pm on the same day, he received telephone information from Perkit Village Sarpanch that one female dead body was found in the Indiramma house which was under construction, belonging to one Smt Anjali. That he immediately rushed to the spot and found one unknown female dead body, aged between 35 to 40 years, with blood oozing from nose; that some part of the saree was gagged in the mouth and some part of it was tied around the neck; and that as per the condition of the dead body, it appeared that two days back some unknown culprits committed rape and killed her. That on the basis of the said complaint,

P.W-16 registered a case in Crime No.380 of 2008 for the offences under Sections-376 and 302 IPC and issued Express FIRs to all the concerned. That on receipt of information, P.W-17 took up the investigation, examined and recorded the statement of P.W-1, rushed to the scene of offence, secured the presence of P.W-9, L.W-14-N.V.Hanumanth Reddy and L.W-15-Shaik Basheer, conducted the scene of offence panchanama, held inquest over the dead body of the deceased, seized MOs.1 to 12 under the cover of panchanama in the presence of the said panchas, got the dead body of the deceased photographed by P.W-4 and sent the dead body for post-mortem examination. That the services of P.W-15-Finger Prints Inspector, Finger Prints Unit, CID, Nizamabad, and his team were utilised for lifting the chance prints on MO-11-Mc Whisky bottle which was seized from the scene of offence and to collect the material evidence. That on 07.10.2008, P.W-5, L.W-7-Dasari Pedda Sayamma and L.W-8-Dasari Chinna Sayamma visited the Government Hospital, Armoor, and identified the deceased as one Dasari Sayamma and that P.W-17 examined them and recorded their statements. That on perusing and analysing the log details of the cell phone seized from the scene of offence, i.e., three Missed Calls and nine Dialled numbers, it was observed that two phone numbers, i.e., 9912433416 and 08463223737

were operated by P.W-6 and that therefore, the statement of P.W-6, from whose shop the appellant purchased the Airtel SIM Card, was recorded. That later, P.W-17 recovered the application form filled by the appellant for obtaining the Airtel SIM card along with photo and Voter ID card. That on 17.10.2008, at 11.30 am, on reliable information, P.W-17 along with his staff rushed to Armoor Village, apprehended the appellant at his rented house of Gongadolla Rajender and on interrogation, in the presence of L.W.16-Gaddam Sayanna and P.W-13, he voluntarily confessed to have committed the offence. That P.W-16 recovered M.Os-13 and 14 and Instructions Booklet under the cover of panchanama from the appellant, arrested the appellant and produced him before the Judicial First Class Magistrate, Armoor. That P.W-17 sent the appellant to the Government Hospital, Nizamabad, for potency test; and that on his request, L.W-19-Civil Assistant Surgeon, Government Hospital, Nizamabad, examined the appellant, preserved his semen, conducted potency test on him and issued Ex.P-17-Certificate of Potency opining that he was capable of performing sexual act. That P.W-11-doctor who conducted autopsy over the dead body of the deceased opined that the cause of death was due to Asphyxia as a result of strangulation associated with alcohol consumption.

That on the requisition of P.W-17, P.W-15 has taken the chance prints from the scene of offence on the MC whisky bottle, categorised two chance prints as 'A' and 'B' and opined that chance print 'B' was fit for comparison. That on 15.11.2008, P.W-10 conducted Test Identification Parade, wherein P.Ws.6, 7 and 8 have identified the appellant. That with the permission of the Court, the chance prints and the finger prints of the appellant were forwarded to P.W-14-Inspector, Finger Prints Unit, CID, Nizamabad, who issued Ex.P-15-Report stating that chance print 'B' on MO-11-Mc Whisky bottle was tallying with the right thumb impression of the appellant. After completion of the investigation and after obtaining all the necessary documents, the charge sheet was filed.

Based on the charge sheet and the material collected and placed before it by the Investigation Officer, the Court below has framed the following charges:

"Firstly, that on 04.10.2008 at about 6 to 7 pm, you went to Mamidipally cross road, where you met the deceased-Dasari Sayamma, asked her to fulfill your sexual lust, for which she agreed and demanded to give amount. Both went to under construction house at the village skirts, both consumed liquor and smoke the beedies. After that, you participated in the sexual intercourse with the deceased and when the deceased asked you to give an amount of Rs.300/- you promised her that you will give the amount after participating in sexual intercourse again, but

the deceased did not agreed for that, and on that, you again participated in sexual intercourse with the deceased forcibly. Hence, you committed the offence punishable under Section-376 IPC and within my cognizance.

Secondly, in continuation of the alleged offence due to previous enmity and to avoid giving money, you gagged the saree in the mouth of the deceased and tied the saree around the neck and killed her by strangulation. Thus, you committed an offence punishable under Section-302 IPC and within my cognizance.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 13, got Exs.P-1 to P-18 marked and produced M.Os.1 and 14. On behalf of the appellant, neither oral nor documentary 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 above.

We have heard Mr. B.Hanumantha Rao, learned counsel representing Mr. Brahmadandi Ramesh, learned counsel for the appellant, and Mr. C.Pratap Reddy, learned Public Prosecutor for the State of Telangana, and perused the record.

At the outset, we would like to deal with the charge relating to the offence under Section-376 IPC. As per the case of the prosecution, the wife of the appellant left him one year prior

to the incident; that later, the appellant developed illicit intimacy with the deceased; and that six months prior to the incident, the deceased quarrelled with the appellant on money issue and beat him with the help of others. It is the further case of the prosecution that the appellant took the deceased to the scene of offence with the understanding between them that on the appellant paying the deceased a sum of Rs.300/-, they will have sexual intercourse; that after having sexual intercourse once, the deceased demanded Rs.300/-, but the appellant postponed giving the money by saying that he will give the same after having sexual intercourse again, for which, the deceased did not agree; that the appellant forcibly had sexual intercourse with the deceased second time; and that due to previous enmity and also to avoid giving money demanded by the deceased, the appellant decided to kill her. No witness spoke about the illicit intimacy between the appellant and the deceased and the events that have transpired pertaining to the appellant having sexual intercourse forcibly with the deceased for the second time. P.W-11-doctor who conducted autopsy over the dead body of the deceased found the following aspects on genital examination:

“Labia minor congested bluish and red in colour.
Small abrasions present on the vulva that is bluish in colour.”

However, P.W-11 did not opine that the deceased was subjected to rape and even Ex.P-10-Final Opinion Report also did not refer to rape. Ex.P-9-Forensic Science Laboratory Report mentioned the presence of human semen and spermatozoa on Item No.7 which was sent by the Investigation Officer as a part of potency test on the appellant. Significantly, human semen and spermatozoa were not detected on item No.5-White coloured floral designed saree with dark brown stain marks and on Item No.6, the swab taken from the genital organ of the deceased. Thus, the detection of human semen and spermatozoa on item No.7 only proves the potency and sexual capability of the appellant. However, absence of human semen and spermatozoa on item Nos.5 and 6, allegedly belonging to the deceased, gives rise to a serious doubt as to whether sexual intercourse had taken place or not. Even assuming that such sexual intercourse has taken place, on the prosecution's own case, there was consensus between the appellant and the deceased to have sex. The latter part of the prosecution case, viz., the appellant forcibly had sexual intercourse with the deceased second time, remained unsupported by any evidence. Unfortunately, the Court below has not undertaken any discussion whatsoever on this aspect and jumped to the conclusion based on the alleged confessional statement of the appellant without there being any

evidence whatsoever. Therefore, in our opinion, the prosecution has miserably failed to prove the charge pertaining to the offence under Section-376 IPC and the judgment of the Court below to that extent is wholly unsustainable.

Coming to the charge for the offence under Section-302 IPC, the prosecution case is mainly based on Ex.P-12-Report of the Fingerprints Expert on MO-11-Mc Whisky bottle and the seizure of MO-12-Nokia Cell phone allegedly belonging to the appellant from the scene of offence. It could be seen from the evidence of P.W-17-Investigating Officer that he conducted scene of offence panchanama in the presence of P.W-9, L.W-14-N.V.Hanumanth Reddy and L.W-15-Shaik Basheer, seized MOs.1 to 12 from the scene of offence and that on his requisition, PW-15 lifted the chance prints. P.W-15, who at the relevant time was the Finger Prints Inspector in Fingerprints Unit CID, Nizamabad, deposed that on receiving phone call from the Sub-Inspector of Police, Armoor, on 06.10.2008 at 2.30 pm, he visited the scene of offence along with his staff, found MO-11-Mc Whisky bottle there, minutely examined it and developed two chance prints marked as 'A' and 'B'; and that the chance print marked as 'A' was wanting in clear ridged characteristics for comparison for establishing the identity or otherwise and therefore, it was unfit for comparison. In his

cross-examination, P.W-15 denied the suggestion that he has not visited the scene of offence and has not developed the chance prints.

P.W-14-the Finger Prints Inspector deposed that on the instructions of the Judicial First Class Magistrate, Armoor, he examined and compared the chance print marked as 'B' developed on MO-11-Mc Whisky bottle seized from the scene of offence with the specimen finger prints slips of the appellant marked as 'S' and found that the former was identical to the right thumb impression of the appellant marked as 'S1' and accordingly, he issued Ex.P-12-Finger Print Report, which reads as under:

"Letter Dis.No.539, dated 04.3.2009, has been received from the Hon'ble Judicial Magistrate of First Class, Armoor, Nizamabad District, along with the finger prints of accused-Andrasi Venkati, S/o Mallaiah for examination and comparison with the chance prints concerned in Crime No.380 of 2008 under Sections-376 and 302 IPC of Armoor Police Station.

As per the above reference, I have examined and compared the chance print marked "B" with the finger prints of the accused-Andrasi Venkati, S/o Mallaiah. On minute examination and comparison, it is found that the chance print marked "B" is identical with the right thumb impression marked "S1" on the finger print slip of Andrasi Venkati, S/o Mallaiah (accused) marked 'S'."

Through the above discussed evidence, the prosecution was able to prove the presence of the appellant at the scene of offence on the fateful night.

The other equally important incriminating circumstance pertains to seizure of MO-12-Nokia Cell Phone and MO-13-Airtel SIM Card from the scene of offence. P.W-6 deposed that he worked in Saikrupa Telecommunication situated in Bus-stand of Armour Village; that on 04.10.2008, in the afternoon hours, the appellant came to his shop and asked for a SIM card of Airtel Company; that when he asked about the identity, the appellant gave one photo copy of election card; that when he questioned the appellant as to non-tallying of his face with the photo on the said election card, the latter informed that the photo was taken long back; that he also found the name of one Gossam Balaiah in the election Card given by the appellant; that he filled up the application form in the name of Gossam Balaiah, activated the SIM card and gave it to the appellant after taking Rs.278/- from him; that he allotted the telephone No.9704598762 to the said SIM card and handed over the same to the appellant; that on 07.10.2008, the Sub-Inspector of Police, Armour, came to his shop and enquired whether the SIM card given to the appellant was activated by him; that thereupon, he has given the relevant information to the Police

apart from handing over Ex.P-3-the filled Application form of the appellant to him. P.W-6 further deposed that on 15.11.2008, he was summoned by the Judicial First Class Magistrate, Armoor, to the District Jail, Armoor, to identify the appellant; that he went to the District Jail, Armoor, along with P.W-7, where P.W-10-Judicial First Class Magistrate, Armoor, conducted Test Identification Parade (TIP) by asking him to identify the appellant among the 15 persons who stood before him; and that he identified the appellant as the one who purchased the SIM card from his shop. Except suggesting to P.W-6 that the Police have shown the appellant to him before the conducting TIP, no suggestion worth-mentioning was made to him.

P.W-7, who is running a Mobile Shop at Armoor, deposed that on 04.10.2008 the appellant came to his shop for purchasing a cell phone; that the appellant asked him about second hand cell phone; that he told the appellant that second hand cell phones are not available in the shop; that his friend by name Suman has a second hand cell phone; and that accordingly, on information, the said Suman went to the house of the appellant and sold a cell phone of Nokia 2300 Make for Rs.800/-. He further deposed that he participated in the TIP conducted by P.W-10 and identified the appellant. Nothing

material could be elicited from the cross-examination of this witness.

P.W-10, who was working as Principal Junior Civil Judge, Kama Reddy, at the relevant time, spoke about his holding TIP on the appellant by P.Ws.6 and 7 and the latter identifying him. Interestingly, P.W-10 was not even cross-examined on behalf of the appellant.

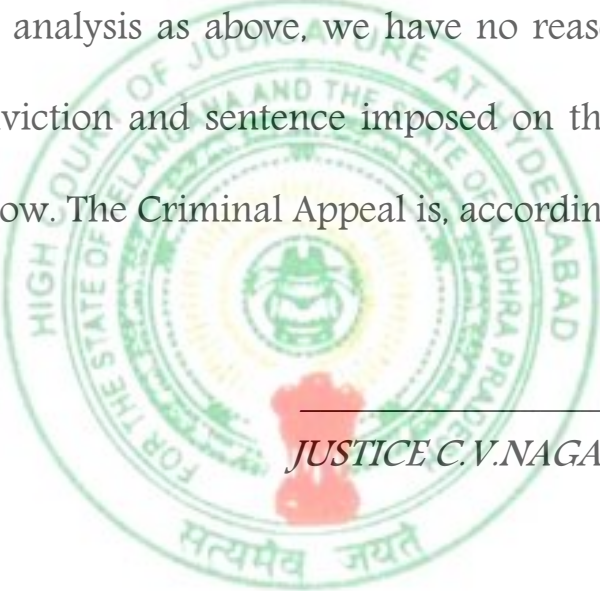
Thus, the evidence discussed above would prove that the appellant has bought the cell phone from one Suman-a friend of P.W-7 and obtained Airtel connection by purchasing SIM card from P.W-6 in the name of one Gossam Balaiah, who was no other than his brother. The seizure of MOs.1 to 12 from the scene of offence was spoken to, not only by P.W-17 but also by P.W-9, one of the panch witnesses to Ex.P-4-Scene of Offence-cum-Seizure Panchanama. Thus, the prosecution has succeeded in proving the seizure of MO-12-Cell phone belonging to the appellant apart from proving that the finger prints on MO-11-Mc Whisky bottle seized from the scene of offence belong to the appellant, thereby establishing the link between the appellant and the offence.

When the presence of the appellant at the scene of offence was proved by the prosecution, the burden lies on the former to explain the presence of his Cell phone and his finger print on

the Mc Whisky bottle seized from the scene of offence under Section-106 of the Indian Evidence Act, 1872. Except denying all the incriminating allegations put to him in Section-313 Cr.P.C. examination by the Court, the appellant failed to offer any explanation whatsoever.

In these circumstances of the case, we hold that the appellant failed to discharge the burden under Section-106 of the Indian Evidence Act, 1872.

On the analysis as above, we have no reason to interfere with the conviction and sentence imposed on the appellant by the Court below. The Criminal Appeal is, accordingly, dismissed.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

31st July, 2018

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