

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

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.347 of 2012

Date: 22.10.2018

Between:

Bollam Chandraiah

...

Appellant

and

State of Andhra Pradesh,
Rep. by its Public Prosecutor
AP., Hyderabad

...

Respondent

Counsel for the Appellant : Smt.A.Gayathri Reddy

Counsel for the respondent : Public Prosecutor (TS)

The Court made the following:



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

The appellant, who is the sole accused in Sessions Case No.266 of 2009 on the file of the Principal Sessions Judge, Nalgonda, , stood trial on the following charge:

“That you on 9th day of September, 2008 in the early morning at about 4.30 a.m., at G.Yedavalli Village, did commit murder of your wife- Renuka and your daughters viz., Jyothi and Manasa by dousing them with kerosene and set fire to them and thereby you committed an offence punishable under Sec.302 IPC and within my cognizance.”

During the course of trial, the Prosecution has examined PWs.1 to 16, got Exs.P.1 to P.18 marked and produced MOs.1 to 4. On behalf of the defence, DWs.1 to 4 were examined and Exs.D.1 to D.3 were marked.

On appreciation of the oral and documentary evidence, the trial Court has found the appellant guilty of the offence punishable under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for Life and also to pay a fine of Rs.10,000/-, and in default of payment of fine, to suffer Simple Imprisonment for one year.

At the hearing, Mrs.A.Gayathri Reddy, learned Counsel for the appellant, submitted that the Prosecution failed to drive home the guilt of the appellant beyond all reasonable doubts inasmuch as

except the solitary testimony of PW.1, the Prosecution failed to adduce any corroborative evidence in support thereof; that the case set up by the Prosecution that the appellant sustained injuries on his face and hands at the time of committing the offence is not even proved and that on the contrary, the evidence of PW.14- Doctor, who issued Ex.P.15- Wound Certificate, after examining the appellant on 11-09-2008 *i.e.*, two days after the occurrence, shows that the injuries were aged 12 hours, which belies the plea of the Prosecution that the appellant had sustained the injuries during the course of occurrence. She further submitted that the evidence of PWs.1 to 3 clearly shows that the appellant was away from his house in his native village where all the three deceased were found dead and that he has returned to the village on coming to know about the unfortunate death of his wife and daughters at about 8.00 a.m., on 09-09-2008. She further submitted that the Prosecution failed to properly prove Ex.P.17- call particulars and also the allegation that the mobile phone relating thereto belongs to the appellant.

Opposing the above submissions, Mrs.J.Sridevi, learned Additional Public Prosecutor for the State of Telangana, submitted that although there might have been some lacunae in the investigation, the Prosecution was able to prove the guilt of the

appellant beyond all reasonable doubts. She further submitted that the appellant, having set up the plea of alibi, miserably failed to prove the same, which, by itself, would create a strong link in the chain of circumstances.

We have considered the respective submissions of the learned Counsel for both parties with reference to the evidence on record.

This case involves gruesome killing of a helpless woman and her two innocent children. The motive set up by the Prosecution is the alleged suspicion on the character of deceased No.1, who is the wife of the appellant. Not much evidence is adduced by the Prosecution to prove motive. Even in the absence of such evidence, if the Prosecution is able to place strong circumstantial evidence, which nullifies the hypothesis of innocence of the appellant, he is not entitled to acquittal. In this regard, it is useful to refer to the contents of Ex.P.1- report given by PW.1- father of deceased No.1 and grand father of deceased Nos.2 and 3, Ex.P.9- Observation report of the scene of offence and Ex.P.11- Inquest report of deceased No.1.

While the occurrence had taken place at about 4.30 a.m., on 09-09-2008 at the house of the appellant, PW.1, who claimed to be present there, gave Ex.P.1- report at 7.00 a.m., *i.e.*, within three

hours of the occurrence. PW.1 has stated in his report that every day, the appellant used to harass his daughter mentally and physically on suspicion; that on 07-09-2008, as his daughter's health was not good, the appellant has brought all the three deceased to Hyderabad, left them with him and went away to his native village-Cherlagowraram; that PW.1 has taken deceased No.1 to a Doctor at Hyderabad and got her check up; that on 08-09-2008, at about 7.30 p.m., they came to Cherlagowraram village; that at about 10.00 hours on that night, the appellant returned to his house, abused deceased No.1 and beat her indiscriminately for not staying awake till he came to the house; that when PW.1 interfered, the appellant abused him; that thereafter all of them slept; that during the early hours at 4.30 a.m., PW.1 woke up on hearing the hue and cry of his daughter; that immediately, he went near the room and found the same bolted from inside; that the appellant opened the doors and ran away and that he saw his daughter and the two grand children burnt in flames. That though he tried to put off the flames, they could not be controlled and that all the three deceased were completely burnt.

The two panchas to Ex.P.9- Scene Observation report were examined as PWs.12 and 13, but they turned hostile. As per the contents of Ex.P.9, PW.13 and his wife reside in a portion adjacent

to the portion, in which the appellant and the deceased used to reside, and that on hearing the cries from inside the room, PW.13 along with PW.1 knocked at the door and the appellant had opened the door and ran away. Ex.P.9 was recorded at 8.00 hours on 09.09.2008. Both PW.12 and PW.13 figured as blood relatives/witnesses to Ex.P.11- inquest report. Column No.XV thereof unequivocally pointed to the appellant as the offender. As noted above, though PWs.12 and 13 have turned hostile, PW.15- Circle Inspector of Police, Chandur, in his evidence, specifically referred to Ex.P.9- Scene Observation report and Exs.P.11 to P.13- Inquest reports of deceased Nos.1 to 3, but no suggestion was put to PW.15, suggesting any cloud of suspicion on those documents. Though Exs.P.9 and P.11 to P.13 do not constitute substantial piece of evidence, the contents thereof would reveal that the case of the Prosecution was consistent right from the time of PW.1 lodging Ex.P.1. In this background, we need to consider the evidence of PW.1, who is the most crucial witness.

PW.1 reiterated the contents of Ex.P.1 as regards his taking all the three deceased to Cherlagowraram village, which is the native village of the appellant, his staying for that night in the house of the appellant after taking dinner, the appellant coming to the house, abusing deceased No.1 and beating her indiscriminately and

the witness interfering and later his sleeping in the verandah, while the appellant and all the three deceased were sleeping inside the room. He also deposed that on hearing the cries from inside the room, himself, his sister (mother of the appellant) and PW.13 knocked at the door after noticing the smoke from inside; that the appellant opened the door and ran away from the house; and that all the three deceased were found dead in charred condition. A careful reading of his cross-examination reveals that the defence failed to elicit anything from this witness, which creates reasonable doubt on the veracity of his testimony.

The learned Counsel for the appellant pointed out that PW.1 has admitted that the appellant has made an attempt to commit suicide by swallowing sleeping pills on the ground that his wife may die due to cancer and got admitted in the hospital for three or four days and that the families of both sides advised the appellant not to worry about the health of his wife. She also submitted that PW.1 has feigned ignorance whether the appellant tried to commit suicide after the death of his wife. Assuming that at one point of time, the appellant had concern about the health of his wife, that would not make the testimony of PW.1 untrustworthy. The defence has not brought out anything as to the proximity of time between the appellant attempting to commit suicide and the date of

occurrence. It is not uncommon that things keep changing with the passage of time and merely because in the past, the appellant had attempted to commit suicide concerned about the health of his wife, it cannot be presumed that he would not resort to killing his wife at a later point of time. No motive was attributed to PW.1 for the alleged false implication of the appellant except giving a suggestion that he demanded money from the latter before the funeral of his daughter and that he had, accordingly, taken money from him. No doubt, PW.1 has admitted that he has taken Rs.80,000/- from the appellant, but no further suggestion was put to this witness that as he demanded more money, which was not met by the appellant, he has foisted the case against him.

The learned Counsel for the appellant submitted that when the flames rose almost up to the height of ceiling as deposed by PW.1 himself, his statement that the lungi and shirt of the appellant were not burnt shows that the latter was not at the scene of offence. In order to show that the appellant was not at home, when the occurrence had taken place, he has examined DWs.1 to 4. DW.1 is none other than the appellant's mother. DW.2 is the owner of the lorry, which was allegedly used for carrying the Ganesh Idol to Bhadrachalam for immersion, and the appellant allegedly accompanied him along with DW.3 and some others.

DW.1's evidence does not throw much light as it was a mere *ipsi dixit*. As regards DW.2, he deposed that on 09-09-2008, at about 4.00 or 4.30 p.m., he left Cherlagowraram Village along with the appellant, DW.3 and some others (09.09.2008 is an obvious mistake for 08-09-2008); that the appellant received a phone call between 1.00 and 2.00 a.m., about the deaths and that on hearing the same, the appellant, DW.3 and others have returned to the village. In the cross-examination, the witness stated that one Bolla Muttaiah received a phone call from their villager about the incident between 1.00 or 2.00 a.m., (midnight). It could thus be seen that while in the chief examination, he stated that the appellant received a phone call, in the cross-examination, he stated that one Bolla Muttaiah has received the information about the incident. His further statement that the information was received between 1.00 or 2.00 a.m., does not match with the time of occurrence *i.e.*, 4.30 a.m. He also stated that he has no documentary evidence to show that all of them went to Bhadrachalam.

In the face of the above discussed material discrepancies, we are of the opinion that DW.2 is pressed into service to support of the plea of alibi and his testimony is not worthy of any credence.

Coming to DW.3, he claimed to have received a phone call from their Ex-Sarpanch- Kambalapally Nageshwara Rao about the death by suicide and that on hearing the said news, himself, the appellant and two others have returned to the village at 8.00 a.m. In the cross-examination, he has stated that he is a barber by profession; that himself and his brother share work in the village and that accordingly, the family of the appellant was allotted to him. He has also stated that at about 2.30 a.m., they came to know about the incident. While DW.2 has come out with a varied version about the person, who received phone call as noted above, DW.3 has stated that he himself had received the phone call. As regards the time of receipt of phone call, DW.2 also referred to the time by which the incident did not occur at all. DW.2 admitted that though they have travelled by bus he did not preserve the bus tickets. While the evidence of DWs.2 and 3 are contradictory on various aspects as discussed above, the falsity in the plea of alibi has got exposed by Ex.P.17- call particulars. The Prosecution has examined PW.16- Deputy General Manager, Legal and Regulatory Nodal Officer, in the office of the Idea Cellular Limited, Hyderabad, through whom Ex.P.17 was marked. He deposed that on the requisition given by the Superintendent of Police, Nalgonda, ownership and call details/particulars of mobile No.9848847618 for the period from 01.09.2008 to 19.09.2008 were furnished. He

further deposed that Ex.P-17 contains the call particulars of the idea mobile phone No.9848847618 belonging to the appellant along with the details of those call particulars given by the Airtel company; that the last call through idea mobile phone No. 9848847618 was to mobile No.9908025396 on 08.09.2008 at 8.43 p.m. and that the last incoming message to the said mobile phone was from idea cellular company's server. He also deposed about the different columns shown in the call data, including the location of the towers under which the cell was operated and that the two towers, from which the cell was operated for making/receiving calls/smss, are located at Nalgonda Town near Clock Tower and Chandur. In the cross examination, it was elicited from P.W.16 that the witness did not produce the record to show the corresponding numerical numbers about the location of towers. The witness, however, added that there was record in their office pertaining to the same. Interestingly, no suggestion was put to P.W.16 that either the mobile bearing no.9848847618 did not belong to the appellant or that no incoming or outgoing calls to and from the mobile of the appellant emanated through either of the two towers located at Nalgonda and Chandur.

As rightly observed by the Court below, based on the evidence of P.W.16, the last call from the appellant's mobile

no.9848847618 was made to mobile No.9908025396 on 08.09.2008 at 8.43 p.m. If the appellant has left the village on 08.09.2008 at about 4.00 p.m. as claimed by the defence, there was no possibility of the call being routed through the cell tower located at Chandur, which evidently covers the native village of the appellant. Thus, not only that the appellant failed to establish alibi through D.Ws.1 to 3, but also his attempt to prove the alibi is thwarted by the prosecution by producing the call data and examining P.W.16, whose evidence remained unimpeached.

The law is well settled that the plea of alibi is a double edged weapon. If the appellant successfully proves this plea, he will be entitled to acquittal. Otherwise, it will be treated as a strong link in the chain of circumstances to prove his guilt. (See **Arepalli Chalapathi Rao vs. State of A.P.**¹, **State of Maharashtra v. Narisingarao Gangaram Pimple**², **Debar Kundu Rama Krishna Rao v. State of West Bengal Crimes**³). Once the plea of alibi is disbelieved, it is reasonable to presume that the appellant was very much present in the house when the occurrence has taken place at an odd time i.e., about 4.30 a.m. Therefore, the cause of death is specially in the knowledge of the appellant. The appellant

¹ 2017(1) ALT (Crl) 441

² AIR 1984 SC 63

³ (HC - Kolkata) 1 (1988) 654

failed to explain the same. Thus, he failed to discharge the burden placed on him under Section 106 of the Indian Evidence Act, 1872.

As regards the submission of the learned counsel for the appellant that the burn injuries on the face and hands of the appellant were sustained about 12 hours before he was examined at 12.40 p.m. on 11.09.2008, the prosecution case on the burns sustained by the appellant is somewhat hazy. It has examined P.W.14 – the Deputy Civil Surgeon, District Headquarters Hospital, Nalgonda, to speak about his examining the appellant on 11.09.2008 at 12.45 p.m. He also issued Ex.P-15 – wound certificate. However, in his evidence, P.W.15 – the Investigating Officer, deposed that on 24.09.2008, he apprehended the appellant at his house at Cherlagowraram Village and as he sustained injuries on his face and hands, he was sent to the Government Hospital, Nalgonda for treatment. Interestingly, the medical record pertaining to the examination of the appellant on 24.09.2008 or any other subsequent date has not been produced by it. P.W.15 also did not speak about Ex.P-15 – wound certificate, dated 11.09.2008, issued by P.W.14. Interestingly, the defence made a suggestion to P.W.15 that on 09.09.2008 itself, the Police have taken the appellant into their custody, which of course was denied by the witness. The failure of the investigating officer to refer to Ex.P-15

– wound certificate, and to produce any medical record pertaining to the alleged examination of the appellant after he was apprehended on 24.09.2008 lead to an inference that as suggested to P.W.15, the Police have taken the appellant into the custody on 09.09.2008 itself, sent him to the Government Hospital for medical examination and on examination by P.W.14, he issued Ex.P-15 – wound certificate. As the Police have shown the appellant's formal arrest only on 24.09.2008, they have obviously refrained from referring to the factum of P.W.14 examining the appellant, his issuing Ex.P-15 – wound certificate. This lapse in the case of the prosecution, however, would not help the appellant in getting benefit of doubt. As per Ex.P-15 – wound certificate, as spoken to him by P.W.14, the appellant suffered burns on face and also dorsum right hand and left hand fingers. The case of the defence, however, is that on 11.09.2008 at 8.00 p.m., the appellant tried to commit suicide by jumping over electric live wire. The defence, however, could not elicit from P.W.14 that the burn injuries were caused due to electrical shock. In our opinion, having regard to the nature of the burn injuries suffered by the appellant, it is highly improbable that they were caused by electrical shock. Though a suggestion was put to P.W.15, which was admitted, that a case of attempt to commit suicide was registered against the appellant, no evidence in support thereof has been placed on behalf of the

defence. At any rate, whether the appellant has received burns at the time of occurrence or at a later point of time does not really tilt the case either way. Assuming that the appellant did not suffer burns at the time of occurrence, the Court cannot presume that he was not present in the room. It would quite well be that the appellant could have taken all the precautions to ensure that he will not be affected by the flames. P.W.1 categorically deposed that the appellant was very much inside the room and that on his knocking the doors, he opened the same, escaped and ran away and we have no reason to doubt the veracity of his testimony. Apart from the evidence of P.W.1, the conduct of the appellant in setting up the plea of alibi and his failing to prove the same also convinces us to hold him guilty. Apart from the same, the defence failed to show any strong reason for deceased No.1 - the wife of the appellant, to burn her two children to death, even assuming that she wanted to put an end to her own life due to the alleged cancer. Indeed, no medical record has been placed by the appellant before the Court in support of his plea that deceased No.1 was suffering from cancer. Assuming so, no mother would like to kill her own children merely because she was suffering from illness when not only the appellant – the father but also the grandparents of either side are available to take care of their interests even in her absence. All these circumstances strongly prove that the plea of the suicide

set up by the appellant is nothing but a make believe one. For all the aforementioned reasons, we do not find any reason to interfere with the judgment of the Court below.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 22nd October, 2018
lur/ghn



