

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

Crl.A.No.1151 of 2011

Between:

Mandade Rajender (A-1),
S/o.Shankar aged 27 years,
Occ: Agriculture R/o.Bareguda
and another

... Appellants

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

... Respondent

JUDGMENT PRONOUNCED ON 25.07.2018

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

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.NAGARJUNA REDDY,J)

(GUDISEVA SHYAM PRASAD,J)

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

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!Counsel for the Appellants : Mrs. A.Gayathri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

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>Head Note:

?Cases referred:

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Counsel for the Appellants : Mrs. 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 accused No.1 and 2 in Sessions Case No.285 of 2010 on the file of the III Additional Sessions Judge (FTC) at Asifabad, filed this criminal appeal against judgment dated 30.09.2011, whereby they were convicted for the offence punishable under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- and in default of payment, to undergo rigorous imprisonment for one month and also for the offence under Section 498-A I.P.C. and sentenced to undergo imprisonment for six months and to pay a fine of Rs.500/- and in default of payment, to undergo simple imprisonment for one month.

2. The case of the prosecution in brief, is stated as hereunder:

Accused No.1 was the husband, accused No.2 was the mother-in-law and accused No.3 was the sister-in-law of the deceased. On 19.05.2006, the accused got married to the deceased and her father gave Rs.80,000/- net cash and Rs.50,000/- worth household articles as dowry, as demanded by the accused. The accused and the deceased lived happily for 3 months but later, accused Nos.1 to 3 started harassing the deceased for additional dowry of Rs.1 lakh. That about one year prior to the incident, the deceased was sent to her parent's house by A1 and A2; that a panchayat of the caste elders was held, where the accused demanded additional dowry of Rs.1 lakh, whereupon, the deceased lodged a complaint against the accused for

domestic violence and that later, on the assurance given by A1 and A2 to look after the deceased well, the parents of the deceased sent back the deceased to the house of the accused and the domestic violence case was compromised in the court. That, on 10.10.2009 at about 1900 hours, A1 and A2 again harassed the deceased and insisted her to bring additional dowry from her parents and when the deceased refused to do so, A1 and A2 forcibly administered poison into her mouth and killed the deceased, carried her dead body by an autorickshaw of LW-9, stating that the deceased consumed poison and pretended that they were carrying her for treatment to the hospital, but after some time, brought her back to the house, saying that she died.

That, LW-1, the father of the deceased, gave a complaint about the death of his daughter. LW27, the Sub-Inspector of Police, P.S. Kaghaznagar, registered a case in Crime No.74 of 2009 u/s. 304(B), 302 r/w. 34 IPC, issued express FIRs and requisitioned to LW.26, the Tahsildar of Kaghaznagar to visit the scene of offence and conduct inquest over the dead body of the deceased. Subsequently, LW-28, the then Sub-Divisional Police Officer, Kaghaznagar, investigated into the case. That during the course of investigation, LW-28 visited Burdaguda and examined the complainant/LW-1 and recorded his statement u/s. 161 Cr.P.C. He has also examined and recorded the statements of witnesses LW-2 to 20 u/s. Sec.161 Cr.P.C. at the scene of offence at the house of A1 and A2 at Bareguda, conducted scene

of panchanama before the mediators LWs. 21 to 23 and seized one poison plastic container containing some quantity of liquid object nearby the scene of offence, under the cover of panchanama before LWs.21 to 23 and has drawn rough sketch of the scene of offence. That, LW-26, who conducted inquest over the body of the deceased, seized the clothes of the deceased and tied cloth pieces in the presence of the mediators LWs.21 to 23 and sent the dead body of the deceased to Government hospital Sirpur-T for autopsy; that LWs.24 and 25 conducted autopsy over the dead body of the deceased and preserved the viscera for chemical analysis; that the material objects seized, were sent to the Assistant Director, RFSL, Karimnagar, for examination and basing on his chemical analysis report, LWs.24 and 25 issued final opinion as to the cause of death as due to Organophosphate insecticide poisoning.

That, during the investigation, LW-28 apprehended accused Nos. 1 and 2 and brought them to PS Kaghaznagar-R on the same day of the occurrence of the offence, at 1900 hours and interrogated them; that during the interrogation, A1 and A2 voluntarily admitted to have committed the offence, that, LW-28 effected their arrest and remanded them for judicial custody and that efforts were made to arrest A3 who was still absconding. That on 12.11.2009, LW-28 was relieved from Kaghaznagar in connection with his transfer and LW-29, the Sub- Divisional Officer, Kaghaznagar, assumed the charge of

Kaghaznagar Sub Division on the same day and completed the investigation.

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

“Firstly: The marriage of A1 of you was performed with the deceased on 19.05.2006 as per your caste customs. At the time of marriage you were given net cash Rs.80,000/- and Rs.50,000/- worth of house hold articles. For about 3 months you treated deceased well. Later you A1 to A3 demanded the deceased additional dowry of Rs.1 lakh from her parents. When the deceased expressed her inability you sent her to her parent’s house. Therefore, you committed an offence, punishable under Section 498(A) IPC and within my cognizance.

Secondly: You approached the complainant, his family members and caste elders and convinced them that you will look after the deceased to your house. On 10-10-2009 at about 1900 hours you A1 and A2 again harassed the deceased to bring Additional dowry Rs.1 lakh from her parents. When they refused then A1 and A2 of you administered poison into the mouth of the deceased by tying her hands and legs in your house and murdered her. Therefore you A1 and A2 committed murder of the deceased, punishable under Section 302 r/w. 34 IPC and within my cognizance.”

4. As the plea of the accused is one of denial, they were subjected to trial during which, the prosecution examined PWs. 1 to 15, got exhibits P1 to 25 marked and produced MO.1. On behalf of the defence, no oral evidence was let in. However, it has got Ex.D1 to D6 marked.

5. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted herein before.

6. This case is based on circumstantial evidence, in the absence of eye witnesses to the occurrence. In the charge sheet, the prosecution

alleged that on the report of PW-1, LW-27 – Assistant Sub-Inspector of Police of P.S., Khagaznagar, has registered the case and LW-28, the Sub-Divisional Police Officer, Khagaznagar, has investigated the case. After investigation, LW-28 was transferred and LW-29, his successor officer, on verification of the record pertaining to investigation, filed the charge sheet.

7. In this case, we have noticed an unusual and extraordinary feature, namely, that the Court below proceeded with the case without recording the evidence of LWs.27 to 29. A perusal of the docket proceedings shows that on 12.05.2011, LWs.27 to 29 were absent and the Court immediately closed the evidence and posted the case for examination under Section 313 Cr.P.C.

8. As rightly submitted by the learned counsel for the appellants, non-examination of PWs.27 to 29 in general and LWs.28 and 29 who caused investigation and filed charge sheet respectively, in particular has caused immense prejudice to the accused for, the whole case of the prosecution is rested on investigation by the police based on which they filed the charge sheet. Various incriminating aspects pointed out in the charge sheet and the material collected during the investigation, relying on which the Court has framed charges, cannot be used against the accused, unless they are given an opportunity of cross examining the investigating officers and elicit answers, which

may likely raise reasonable doubts in the mind of the Court about the case of the prosecution.

9. In BASANT SINGH AND OTHERS VS. STATE OF BIHAR¹, the Division Bench of the Patna High Court, has highlighted the importance of the evidence of investigating officer as under:

“The activities of the Investigating Officer immediately starts after the law is set in motion with regard to a cognizable offence when an information to the police has been given covered by S.154 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the Code). The Investigation is conducted, as a matter of course without any direction whatsoever, as indicated in S.156 of the Code. In course of investigation, the two important functions apparently are, the first being examination of witnesses as contemplated under S.161 of the Code. The use of such statements made by the witnesses is indicated in S.162 of the Code. The prominent substance of this provision is that such statements are not used for corroboration but for contradiction only. The question of contradiction arises only when the Investigating Officer comes in the dock to give evidence in a particular trial. The next important function is the objective finding of the Investigating Officer under the four walls of law and that will also include the inspection of the place of occurrence. Of course there are also connected functions like seizure of articles, blood and any such material connected with the commission of the offence.

On the basis of the facts, mentioned above, the important function of the Investigating Officer as a witness now can be said to be that if some statement of witnesses during trial does not appear to be stated at the earliest stage meaning thereby, while giving statement before the Investigating Officer, that becomes an important aspect for contradicting the witness, for the defence of the accused, of important omissions of statement of some facts before the Investigating Officer but mentioned during the trial in the evidence having great impact upon the prosecution case will be a relevant fact for consideration as to whether the statement made in evidence can be said to be a genuine statement or an afterthought. Similarly, when there is a dispute with regard to the place of occurrence and also the manner of occurrence, in that case also the defence may develop that point with reference to the objective findings of the Investigating Officer. **When the Investigating Officer is in the dock absolutely, there is no problem for the defence but the real problem arises if the Investigating Officer has not at all been examined in the case**”.(Emphasis added).

¹ 1985 CRIL.J. 1406

10. Indeed, on behalf of the defence, a plea was raised to the effect that non-examination of investigating officer is fatal to the case of the prosecution. However, the Court below without proper justification, brushed aside this objection. As noted herein before, on the very day on which LWs.27 to 29 were absent, the lower Court has closed the evidence on prosecution side, which shows undue haste on its part. It is stated that every trial is a voyage of discovery in which truth is the quest. Such being the case, there is no justification for the court to act in undue haste by proceeding with the case, without examining the most crucial witnesses whose evidence constitutes the bedrock of the whole case of the prosecution.

11. Unless the accused pleaded guilty, it is incumbent upon the prosecution to examine the investigating officer, who plays a critical role from the start to the end of the investigation. It is more so in case of this nature, where the charge is that the death was caused by poisoning. Unless the investigating officer has collected the evidence of source of procurement of poison by the accused and the same is placed before the Court with proof, it is not possible for convicting the accused on such charge. Unfortunately, the lower Court has completely lost sight of this rudimentary aspect and proceeded in a rather casual manner and convicted the accused, defeating the ends of justice. Such an approach on the part of a Sessions Court, is wholly undesirable. We must also observe that the Public Prosecutor

has equally acted with negligence, firstly by not ensuring the presence of LWs.27 to 29 and secondly by not requesting the Court to adjourn the case to secure the presence of the said witnesses. At least after 12.05.2011 when the evidence was closed, the Public Prosecutor has not filed any Memo. before the Court to re-open the evidence to examine the investigating officers. The Director of Prosecutions, shall examine the conduct of the Public Prosecutor concerned and initiate steps against him, if he is still in service.

12. In the light of the above discussion, we have no option, other than setting aside the judgment of the lower Court. Accordingly, the judgment of the III Additional Sessions Judge (FTC) at Asifabad in Sessions Case No.285 of 2010 dated 30.09.2011 is set aside and the case is remanded to the Court below, for re-opening the trial for the limited purpose of facilitating the prosecution to examine LWs.27 to 29 and disposing of the case afresh by the court after considering their evidence. Even if LWs.27 to 29 are not in service but they are available and in a fit state to give evidence, the State shall secure their presence and examine them. If for any reason, it is not possible to examine them, the State shall examine the officer presently working in place of LW-28, to enable him to depose with reference to the record available. The lower court shall ensure that the case is disposed of afresh, within three months from the date of receipt of

this judgment. The accused shall continue to remain on bail, till disposal of the case by the lower Court afresh.

13. In the result, the criminal appeal is allowed to the above extent.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 25th July, 2018

Note:

The Registry shall circulate a copy of this judgment to all the subordinate courts.

(L.R. copies)

(B/o.)

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