

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

Crl.A.Nos.654 and 1156 of 2012

Criminal Appeal No.654 of 2012

Between:

Sonti Nagaraju @ Nagachaitanya (A-1),
S/o.Veeraiah, aged about 32 years,
Caste: Gowda, D.No.20/333,
Near Lalitha Convent, Bethavolu,
Gudivada, Krishna district. ...

Appellant

And

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

Respondent.

Criminal Appeal No.1156 of 2012

Between:

Karanam Parathi W/o.Late Ramarao,
27 years, R/o.Gangamahal Lane,
Rajuvari Street,
Gudivada. ...

Appellant

And

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

Respondent.

JUDGMENT PRONOUNCED ON **05.11.2018**

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

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|---|-----|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes |

(C.V.NAGARJUNA REDDY,J)

(T.AMARNATH GOUD, J)

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD
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!Counsel for the Appellant :

Mrs. A.Gayathri Reddy

Counsel for the Respondent :

Public Prosecutor (AP)

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>Head Note:

?Cases referred:

¹ 2006 (10) SCC 681

² 2013 (8) SCC 60

³ 2001 (8) SCC 311

4. AIR 2014 SC 1256=2014(4) SCC 9

5. AIR 2012 SC 1357=2012 (4) SCC 257

6.AIR 2013 SC 912=2012 (10) SCC 464

7.AIR 2013 SC 3150=2013(5) SCC 722

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

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

These two appeals arise out of the same judgment dated 08.06.2012 in Sessions Case No.330 of 2009 on the file of the XI Additional District and Sessions Judge, Krishna at Gudivada.

2. The appellants are the accused in the aforementioned sessions case. They were charged for the offences punishable under Sections 120-B, 449, 452, 302, 201, 203 r/w. Section 34 I.P.C. The accusation against the accused in brief is that, accused No.2 had illicit intimacy with accused No.1, a mason who worked along with the deceased husband of A2 and that, as the deceased was coming in the way of their illegal relationship, the accused decided to do away with the life of the former and that in furtherance of the said common object, they strangled the deceased in his own house at around 7.45 p.m. on 30.12.2007.

3. Though PW-1, the brother of the deceased gave Ex.P-1 – report, which was received at 2 p.m. on 31.12.2007 in Gudivada I Town Police Station by PW-16, the then A.S.I. of Gudivada Police Station, wherein he specifically alleged that A2 was having illicit intimacy with another person and that he also definitely knew that the deceased did not die due to suicide but it was a case of homicide, for the reasons best known to the police, they have registered Ex.P21 – F.I.R. under Section 174 Cr.P.C. (suspicious death), showing the

deceased himself as a suspect/accused, without even showing the accused, at least as suspects, if not as accused.

4. Be that as it may, about 10 months after the registration of the F.I.R., the police have altered the F.I.R., showing the appellants as the accused. Based on the charge sheet and the material collected during the investigation by the police, the court below has framed the following charges:

“Firstly: That you A.1 and A.2 before prior to 30.12.2007 agreed to kill the deceased viz., Karanam Ramarao, S/o.Ramulu and besides the above said agreement and committed murder in pursuance of the said agreement which is an offence punishable with death or imprisonment for life and such agreement itself an criminal conspiracy and that thereby committed an offence punishable U/s. 120-B IPC and within my cognizance.

Secondly: That A.1 of you on 30.12.2007, committed house trespass by entering into the building in possession of the deceased (Karanam Ramarao) used as a human dwelling in order to commit the offence of murder of deceased (Karanam Ramarao) punishable with death and that thereby committed an offence punishable U/s.449 IPC and within my cognizance.

Thirdly: That you A.1 and A.2 on 30.12.2007 after 7.45 p.m., tied a saree to the neck of the deceased (Karanam Ramarao) and pulled by you each from opposite side till his death and committed murder of the deceased (Karanam Ramarao) initially causing the death of him and thereby committed an offence punishable U/s.302 IPC and within my cognizance.

Fourthly: That you A.1 and A.2 after 7.45 p.m. on 30.12.2007, knowingly to cause the evidence connected with the offence of murder to disappear and to give a false impression that deceased committed suicide by knowing you tied the deceased to the T.V. Stand with the intention to screen yourself from legal punishment and thereby committed an offence punishable U/s.201 IPC and within my cognizance.

Lastly: That you A.2 of you on 30.12.2007, knowingly that you both committed an offence of murder and A.2 of you gave false information to the police that the deceased (Karanam Ramarao) committed suicide and A.2 of you and thereby committed an offence punishable U/s.203 IPC and within my cognizance”.

5. As the plea of the accused was one of denial, the prosecution examined PWs-1 to 18, got exhibits P1 to P24 marked and produced MOs.1 and 2. On behalf of the defence, no oral evidence was let in but Ex.D1, the purported contradiction in the statement of PW.2 under Section 161 Cr.P.C., was marked.

6. On appreciation of the oral and documentary evidence, the court below has convicted and sentenced the appellants as under:

“A.1 and A.2 are found guilty of the offences punishable under Sections 120-B, 201 and 302 IPC and A.1 found guilty of the offence punishable under Section 449 IPC and A.2 is found guilty of offence punishable under Section 203 IPC. A.1 and A.2 are therefore convicted for such offences under Section 235 (2) Cr.P.C.

Hence, the A.1 is sentenced to imprisonment for life for the offence punishable under Section 302 IPC and shall also pay a fine of Rs.5000/-. A.1 further sentenced to imprisonment for three years and shall also pay a fine of Rs.5,000/- for the offence punishable under Section 201 IPC. A.1 is further sentenced to imprisonment for a period of three years for the offence punishable under Section 449 IPC and shall also pay a fine of Rs.5,000/-.

A.2 is sentenced to suffer imprisonment for life for the offence punishable under Section 302 IPC and shall also liable to pay fine of Rs.5,000/-. A.2 is further sentenced to suffer imprisonment for a term of three years and shall also pay a fine of Rs.5,000/- for the offence punishable under Section 201 IPC. A.2 is further sentenced to imprisonment for a period of six months for the offence punishable under Section 203 IPC. Since the punishment for the offence punishable under Section 120B IPC is like the one to be imposed to an abettor and A.1 and A.2 are the main offenders themselves, no separate sentence need be passed for the offence punishable under Section 120 B against them and if the conspirator other than the main offenders they shall be punished as abettors similarly to that of main offenders. Hence, this court is of the view no separate sentence is required to be passed against A.1 and A.2 in respect of the offence punishable under Section 120B IPC.”

7. At the hearing, Smt.A.Gayathri Reddy, learned counsel for the appellant/A1 in Crl.A.No.654 of 2012 and Smt.C.Vasundhara Reddy, learned counsel for appellant/A2 in Criminal Appeal No.1156 of 2012, submitted that all the private prosecution witnesses including PW-1, who gave Ex.P1-report to the police, having turned hostile, the prosecution failed to bring on record, sufficient evidence to hold the accused guilty of murder. That though the two sons of the deceased and A2, who were 13 years and 12 years of age, were examined by police as LWs.10 and 11, they were given up and they being material witnesses, their non-examination is fatal to the case of the prosecution. The learned counsel further submitted that when PW-15, the doctor who conducted autopsy, did not rule out the possibility of suicide by strangulation, in the absence of specific evidence against the accused, the lower court has fallen into a serious error in holding the accused guilty of murder.

8. The learned counsel representing the learned Public Prosecutor, opposed the above submissions and argued that though there are some lacunae in the investigation, the prosecution was able to bring out strong circumstances in clearly proving guilt of the accused beyond reasonable doubt.

9. We have carefully considered the respective submissions of learned counsel for both the parties, with reference to the material available on record.

10. The fact that the death is unnatural, is not in dispute. The death took place around 7.45 p.m., in the house of the deceased and A2. At the earliest point of time, i.e. at 2 p.m. on 31.12.2007, the day following the night during which the death took place, PW-1 specifically alleged that the death occurred due to homicide. He also referred to the illicit intimacy between his sister-in-law (A2) and A1 and stated that he questioned A2 as to how it was possible for the deceased to commit suicide by hanging to a T.V. table and stated that the elders including 34th Ward Councilor chastised A2 for her illegal intimacy with A1. As noted above, neither of the accused was shown as suspects. Be that as it may, after Ex.P22 – postmortem certificate was received, the police have altered the F.I.R. on 06.10.2008, by including the various offences referred to above and showing the appellants as the accused.

11. In a case such as the present one, circumstantial evidence plays an important role. PW-1, the brother of the deceased unfortunately turned hostile. Therefore, he did not speak about the illicit intimacy of A2 with another person, but in Ex.P1, PW-1 specifically alleged that A2 had intimacy with another person. Even PW-2 stated that the deceased informed her that A2 was not looking after him and his children properly, as she has got acquaintance with A1, that the municipal councillor came to the house of A2 and tried to settle the dispute and that A2 informed the councillor that she did not have

intimacy with anyone, but the deceased was beating her with suspicion. Significantly, not even a suggestion was made by the defence to PW-2, that there was no illicit intimacy between the accused. Taking into consideration the contents of Ex.P1 and the uncontraverted testimony of PW-2 as regards illicit intimacy between the accused, it is safe to conclude that illicit intimacy between the accused existed and that would have been the possible reason for the accused to nurse the motive to do away with the life of the deceased.

12. Though the prosecution could not examine the eye witnesses, the testimony of PW-2, who alone has not yielded to the pressures to turn hostile, unlike PW-1 and PWs.3 to 12 helped the case of the prosecution to establish its case. As regards A2 being at home and A1 visiting her house immediately preceding the occurrence, PW.2 has deposed that at about 7 p.m. on 30.12.2007, A2 and the deceased returned home from their work, that A2 was grinding masala outside the house, that when the witness asked her about the curry she was making, she replied that it was chicken curry and that after half-an-hour, A1 came to the house of the deceased with a carry bag and went into the house, while A2 was talking with her outside. That, when the deceased was refusing to take drinks, A2 from outside advised him to drink as he was habituated to drinking; that 1 ½ hours after the witness went inside her house, she came out of the house and on the next day morning, PW-7 knocked at her door and

informed about the death of the deceased. She further stated that she saw the dead body of the deceased and she found a saree around his neck with one end tied to T.V. stand. She further stated that the height of the TV stand is about 1 ½ feet. That when she questioned A2 about the cause of the death, she replied that her husband committed suicide by hanging to the TV stand with the saree and that when the witness questioned A2 as to how it was possible, she feigned ignorance.

13. In her cross-examination, PW-2 stated that she was examined by police at about 3.30 p.m. 10 months after the death of the deceased; that she saw A1 two or three times prior to the death of the deceased, that electricity supply was off 15 minutes before she talked to A2. She denied the suggestion that she did not inform the police that A1 has offered liquor to the deceased and that when the latter refused to take liquor, A2 advised him to consume the same. She denied the suggestion that she created story about knowing the name of A1 and that she did not see A1 prior to the death of the deceased and the police have shown him to her for the first time. She also denied the suggestion that A1 did not visit the house of the deceased on 30.12.2007. Nothing material could be elicited from A-2 to discredit her testimony. In the absence of any enmity with the accused, PW-2 would have no reason to speak falsehood to falsely implicate the accused. Her evidence reveals that she was the last seen

witness with respect to A-1 and A-2 at the latter's house, before the death of the deceased.

14. The crucial piece of evidence in this case is Ex.P-22 – post-mortem report and the deposition of PW-17, the doctor who issued the said report on conducting post mortem on the body of the deceased. In Ex.P-22, the following injuries have been noted:

“1. A ligature mark round neck is seen above the thyroid cartilage which is black in colour with contusion about $\frac{1}{2}$ inch width round the neck. Extravasations of blood under the skin of the neck is seen at the side of ligature.

2. The scrotum and the penis is swollen. The scrotum shown contusion on right side 6 c.m.x 4 c.m.

3. The face and the whole body is swollen. Blebs seen here and there on the body”.

15. In his evidence given on 30.12.2011, PW-17 deposed that his final opinion on the cause of death to the best of his knowledge was due to homicide due to strangulation. On 30.12.2011, PW-17 was subjected to cross examination by A1 and A2 only in brief by putting one or two questions. Three months after closing his evidence, the witness was recalled on 28.03.2012 for further cross examination by A1. He admitted that as he did not smell alcohol on opening the stomach, he was of the view that the deceased did not take alcohol before the death. He also deposed that he could not rule out whether the death was caused 30 hours before post mortem examination. He further deposed that throat strangulation was of three types – (1)

suicidal (2) accidental and (3) homicidal and that suicidal and accidental cases are very rare. He further reiterated his earlier opinion that it is a case of homicidal strangulation. He however stated that he did not notice external injuries except ligature marks. That generally, in homicidal strangulation, there will be struggle marks, which are absent in this case. He further added that he cannot rule out suicidal strangulation.

16. It needs to be noted that the defence having not put serious questions to P.W.17 on 30.12.2011, got his evidence reopened for further cross-examination on 28.03.2012, exactly after three months, evidently, to elicit favourable information from the witness. From the slight vacillation in his opinion, it is reasonable to presume that to some extent, the witness has yielded to the influence of the defence. As reflected from his opinion, it was a case of homicidal strangulation; that he did not notice external injuries, except ligature mark; that generally, in homicidal strangulation, there will be struggle marks, which were absent in the present case and that he cannot rule out suicidal strangulation. This opinion of his, contradicts his opinion given immediately preceding it. As per the said opinion, this is a case of suicidal strangulation. We have closely noticed Ex.P-19 – the bunch of five photographs with negatives. One of the five photographs clearly shows strong ligature marks on one side of the neck from the backside middle portion to the throat portion. Even

for the naked eye, the deep ligature marks are clearly visible and it is not possible for a person to press the object around his neck so tight as to leave such strong ligature marks. Therefore, we have no hesitation to accept the opinion of the Doctor – P.W.17 that it was a homicidal strangulation. This view of ours stands fortified by the fact that the accused had come out with an improbable reason as spoken to by P.W.2 *viz.*, that the deceased hanged himself to the T.V. stand with a saree. The statement of P.W.2 that the height of the T.V. stand is 1 ½ feet is not contraverted to by the defence. Therefore, it is well nigh, impossible for a person to commit suicide by hanging to a T.V. stand of a height of 1 ½ feet.

17. There is yet another crucial aspect, which exposes the guilt of the accused. Admittedly, A2 was in the house when the alleged offence took place at around 7.30 p.m. Ex.P-17 – scene observation report, shows that the deceased was a tenant in one of the six portions of the building belonging to one Kandrika Venkateswara Rao. The said portion consists of two rooms with bathroom and latrine, out of which one room was being used as kitchen. Thus, there is only one room left in which the deceased was found. A2 being available in the house, it cannot be believed that homicide or suicide had taken place without her knowledge. Therefore, A2 had specific knowledge about the manner in which the deceased died. She had not come out with any specific stand either through cross-

examination of the witnesses or during her Section 313 Cr.P.C. examination on the manner of death.

18. The learned counsel for the appellants has submitted that in Ex.P-18 – Inquest report, it was clearly observed that accused No.2 had taken medicine and went into sleep and that therefore, she was not aware of the cause of death till the next day morning. We are afraid, the contents of inquest cannot be treated as evidence. If the observation in Ex.P-18 is correct, we see no reason why accused No.2 had not carried forward the same during trial and also in her 313 Cr.P.C. examination.

19. Under Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him (See **Trimukh Maroti Kirkan vs. State of Maharashtra**¹, **Babu and Ors. Vs. The State of Tamil Nadu**² and **Ram Gulam Chaudhury vs. State of Bihar**³). Thus, accused No.2 on whom the burden is placed to explain as to the cause of death of the deceased miserably failed to discharge this burden. The submission of the learned counsel for the appellants that non-examination of L.Ws.10 and 11 – the children of accused No.2 and the deceased, is fatal is without any merit. The prosecution evidently would have noticed the demeanour of the said two

¹ 2006 (10) SCC 681

² 2013 (8) SCC 60

³ 2001 (8) SCC 311

witnesses, who are none other than the children of accused No.2 and the deceased, and given up obviously due to the reason that if they are examined, they may also turn hostile as in the case of P.Ws.1 to 3 to 12. If at all, the defence could have examined the said witnesses to support their case, but they failed to do so. When the death had occurred in front of the eyes of accused No.2 in her own house, her failure to explain the incriminating circumstances put to her gives raises a strong adverse inference against her as held by the Apex Court in a catena of judgments (See **Phula Singh vs. State of Himachal Pradesh**⁴, **Ram Naresh Vs. State of Chattisgarh**⁵, **Munish Mubar vs. State of Haryana**⁶ and **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan**⁷).

20. The circumstances discussed above establish beyond any reasonable doubt that A2 was very much present when the occurrence had taken place and her failure even to inform the Police or any of her relatives at any point of time, apart from having not been able to explain the cause of death, would indisputably establish that A2 is the real culprit.

21. As far as A1 is concerned, as discussed hereinbefore, the prosecution has been able to prove his presence in the house of the deceased around the time of occurrence, through the evidence of

⁴ AIR 2014 SC 1256 = 2014(4) SCC 9

⁵ AIR 2012 SC 1357 = 2012(4) SCC 257

⁶ AIR 2013 SC 912 = 2012 (10) SCC 464

⁷ AIR 2013 SC 3150 = 2013 (5) SCC 722

P.W.2. Based on these circumstances coupled with medical evidence which unfailingly shows the cause of death as homicidal, this Court has no doubt about the culpability of both the accused.

22. In the light of the discussion undertaken as above, we do not find any reason to interfere with the judgment of the Court below.

23. In the result, both these Criminal Appeals are dismissed. The conviction and sentence recorded against the appellants/accused Nos.1 and 2, in the judgment under appeals, for the respective offences punishable under Sections 120-B, 201, 203, 302 and 449 I.P.C., are hereby confirmed.

Since the appellants are presently on bail, their bail bonds shall stand cancelled and they shall surrender before the Jail Superintendent, Central Prison, Rajamahendravaram, within one week from today for serving out the remainder of the sentences.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

05th November, 2018

Note:

L.R. Copies

(B/o.)

msb/GHN

