

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

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No721 of 2012

Date: 29.11.2018

Between:

Patcha Koteswara Rao

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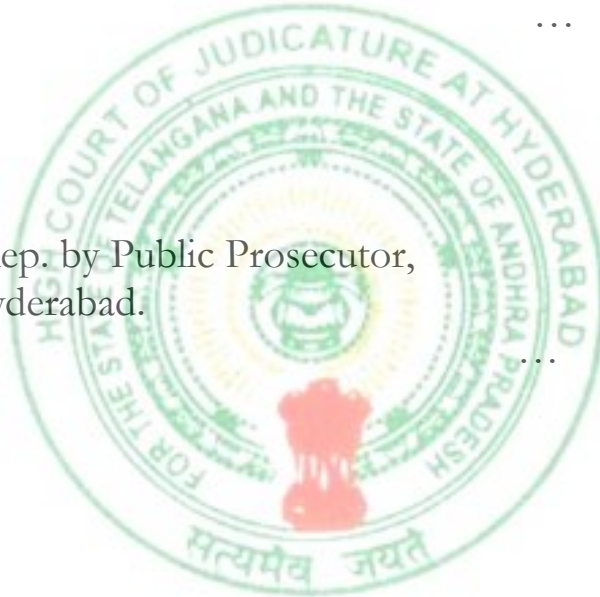
Appellant

and

State of A.P., Rep. by Public Prosecutor,
High Court, Hyderabad.

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Respondent



Counsel for the Appellant : Smt.T.V.Sridevi & Sri C.Upendra.

Counsel for the respondent : Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice T.Amarnath Goud)

This Criminal Appeal is filed against the Judgment, dated 12.07.2012, in Sessions Case No.36 of 2011, on the file of the II Additional Sessions Judge (FTC), Parvathipuram (for short, the trial Court). The trial Court convicted the appellant/accused for the offence punishable under Section 302 IPC., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, simple imprisonment for three months. The appellant was also convicted for the offence punishable under Section 203 IPC., and sentenced to undergo simple imprisonment for one year.

2. The case of the prosecution as set out in the charge sheet is as under:

3. PW.1 is a resident of Sainagar Colony in Bobbili. Her husband, Chinna Sattireddy, who used to run lorry bearing No.AP-16-W-2468 in Bobbili, died due to illness about 8 months prior to the date of incident. Therefore, PW.1 brought the accused who is her younger brother and his wife Patcha Ganga @ Rangamma (hereinafter referred to as the deceased) from Gopalapuram for assistance. The appellant used to work as a Cleaner in the above said lorry. The deceased gave birth to three female children, but all of them died and that the deceased was also suffering from ailments. There was

friction between the appellant and deceased since the deceased was not allowing him to have sex with her.

4. While so, on 8.09.2009, PW.1 went to Parvathipuram to get her brother-in-law's grand daughter examined by Dr.Bogi Eswara Rao. She left the house at about 10.00 AM., and returned at about 4.30 P.M., on the same day. It is alleged that in the absence of PW.1, the accused approached the deceased to have sex with her. Despite her refusal, when the appellant had sexual intercourse, she slapped on his face and in retaliation, at about 3.30 P.M., he pressed the face of the deceased with a pillow in the house and due to suffocation, the deceased died. When the blood was oozing, the accused cleaned it with a cloth. Thereafter, due to fear, the appellant inflicted injuries on himself with a blade and hit his head against a sink in the kitchen and fell on the ground. After return to home from Parvathipuram, PW.1 found the main door of her portion bolted from inside and as such, she went to the rear side through the house of the neighbour tenant Chandrasekhara Rao and found the appellant with injuries. When she enquired, the appellant told her that some persons entered into the house and beat him severely and killed his wife. Immediately, PW.1 informed the same to her brother-in-law Tadi Sattireddy-LW.13 and took the appellant in an Auto rickshaw to the

Government Hospital, Bobbili. On a written report Ex.P31 given by PW.1, a case in Crime No.247 of 2009 was registered under Section 302 IPC., and investigated into.

5. During the course of investigation, PW.12 Inspector of Police, Bobbili conducted inquest under a cover of panchanama-Ex.P15 over the dead body of the deceased in the presence of PW.9 and LW.19-Chintala Rama Sudhakar Rao. He seized blood stained pillow with cover-M.O.1, blood stained cloth-M.O.2, broken bangle pieces-M.O.3 and blood stained bandage cloth-M.O.4. PW.8, the doctor who conducted postmortem examination over the dead body of the deceased, opined that the deceased died of asphyxia due to occlusion of respiratory passages. The appellant later confessed the commission of offence. PW.12 arrested the appellant on 9.9.2009 and remanded him to judicial custody. After completion of investigation, PW.12 filed the charge sheet.

6. On appearance of appellant, the trial Court framed the charges under Sections 302 and 203 IPC., read over and explained to him in Telugu, for which, he plead not guilty of the said charges and claimed to be tried.

7. In support of its case, the prosecution examined PWs.1 to 13 and got marked Exs.P.1 to P.31 and M.Os.1 to 5. No witnesses were examined on behalf of the defence/appellant. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, which he denied. After appreciating the evidence brought on record, the trial Court found the appellant guilty and accordingly convicted and sentenced him, as aforestated. Challenging the same, the present appeal came to be filed.

8. The learned counsel for the appellant would submit that the trial Court ought not to have drawn adverse inference with regard to the presence of the appellant with the deceased in the house and convicted him upon the circumstantial evidence. The trial Court failed to observe that the prosecution has failed to prove the guilt of the appellant by circumstantial evidence as there is no conclusive evidence to prove his guilt and that mere suspicion is not a legal proof to convict the appellant. The trial Court failed to observe that PWs.2 to 4, who are the sisters and brother of the deceased, and PWs.6 and 7, who are the independent witnesses, turned hostile and did not support the case of prosecution. He further submitted that

the trial Court erred in convicting the appellant based upon circumstantial evidence when the prosecution failed to establish each of the circumstances by independent evidence to form a complete chain without giving room to any other hypothesis and consistent with the guilt of the accused and therefore the judgment of the trial Court is liable to be set aside.

9. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of the prosecution witnesses and when the prosecution proved each and every circumstance of the offence, more particularly, all the links in chain of circumstances, the Court can record conviction of the appellant and hence there are no grounds to interfere with the judgment of the trial Court.

10. The case of prosecution is totally based on circumstantial evidence, since the incident allegedly took place in the house of the sister of appellant and except the appellant and deceased, there was no one else and it is not the case of the prosecution that the incident was witnessed by any eyewitness. When the case is based on circumstantial evidence, burden of proof lies on the prosecution to prove all the circumstances from which conclusion of guilt to be drawn must be fully established and the facts so established must be

consistent with hypothesis of guilt of the accused and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt.

11. PW.1 is the sister of appellant. PWs.2 and 3 are the sisters and PW.4 is the brother of deceased. PW.5 is one of the mediators before whom the appellant made extra-judicial confession. PWs.6 and 7 are neighbours of PW.1. PW.8 is the medical officer who examined the appellant and issued Ex.P.10-wound certificate and also conducted autopsy over the dead body of the deceased and issued Ex.P11-postmortem certificate. PW.9 is one of the mediators to the scene observation and seizure of M.Os.1 to 4. PW.10 is one of the mediators to the confession made by the appellant before the Police, leading to recovery of M.O.5-blade. PW.11 is one of the panch witnesses for inquest conducted over the dead body of the deceased under Ex.P.15-inquest report. PW.12 is the Investigating Officer. PW.13 is the Sub-Inspector of Police who received Ex.P.31- complaint from PW.1 and registered the case and issued Ex.P16-FIR.

12. PWs.1 to 4 who are interrelated to the deceased and the appellant turned hostile and did not support the prosecution case. PW.5, the V.R.O., of Bobbili, deposed that the appellant made

extra-judicial confession in the Government Hospital to the effect that the deceased did not agree to have sexual intercourse with him since long time and like wise on the previous day and taking advantage that his sister-PW.1 was not in the house, he asked the deceased to fulfill his desire and when he forcibly had sex with the deceased, she slapped him, and in retaliation, he killed the deceased by pressing her face with a pillow, causing suffocation. PW.5 admitted in his cross examination that he acted as a witness in a number of criminal cases related to Bobbili Police Station. PW.5 is not an eyewitness and he is only a stock witness procured by the prosecution for supporting its case.

13. PW.8 deposed that on 8.09.2009, he treated the appellant for his self-inflicted injuries and that he also conducted postmortem examination over the dead body of the deceased. He opined that the cause of death is asphyxia due to occlusion of respiratory passages and that the deceased might have died due to oppressing of mouth with a pillow. PW.8 admitted in his cross examination that he cannot say with what object, the injuries were caused to the appellant.

14. PW.9 deposed that he acted as a mediator for observation of the scene of offence and in his presence the police seized M.Os.1 to 4 under Ex.P12 scene of observation report. PW.9 denied the

suggestion that he is a stock witness and M.Os.1 to 4 were planted, but not seized from the scene of offence.

15. PW.10 who was working as V.R.O., Boddavalasa village of Bobbili Mandal deposed that on 09.09.2009 at about 9.00 AM., police recorded the confessional statement of the accused and seized the blade under a cover of mediators report Ex.P14. PW.10 admitted in his cross examination that he did not observe whether M.O.5 blade is new or old one and he denied the suggestion that he is a stock witness. PW.11 is another V.R.O., who acted as panch witness for inquest conducted over the dead body of the deceased. In his cross examination, PW.11 admitted that Police used to call him to act as mediator or elder and to draft the relevant reports and that he used to give evidence as witness in concerned Court. PWs.12 and 13 are the Investigating Officers in this case.

16. The material objects mentioned in Ex.P30 F.S.L., report do not indicate any evidence of sexual intercourse as the semen and spermatozoa were not detected in the samples collected. There is no evidence to show who killed the deceased and, more so, when the accused was also injured and lying in a pool of blood in the house. There were no blood stains found on M.O.5 blade and it cannot be

said that it is a weapon, as the same is commonly available in every house.

17. Insofar as motive of the appellant for the commission of offence is concerned, no witness was examined on behalf of the prosecution to prove that the appellant developed any ill-will against the deceased for not allowing him to have sex with her. The prosecution has not examined any independent witness to show that the appellant has a strong reason to do away with the life of the deceased. Therefore, the prosecution has failed to prove the motive of the appellant.

18. PWs.5, 9, 10 and 11 are the revenue officials and they are stock witnesses. They used to assist the Police whenever their presence is required by them and basing on their evidence no conviction can be recorded. The extra-judicial confession made by the appellant to PW.5 cannot be relied upon, as the same was not corroborated by any independent evidence. Mere silence of the appellant at the time of his examination under Section 313 Cr.P.C., cannot be a ground for conviction. The evidence of official witnesses like doctor and investigating officers alone is not sufficient to hold the appellant responsible for the death of the deceased. In the circumstances, the benefit of doubt has to be necessarily extended to the appellant.

19. For the foregoing reasons, the criminal appeal is allowed and the appellant is acquitted of the charges leveled against him. The Judgment, dated 12.07.2012, in Sessions Case No.36 of 2011, on the file of the II Additional Sessions Judge (FTC), Parvathipuram, is set aside and the appellant shall be set at liberty forthwith unless he is required in connection with any other case. The fine amount, if any, paid by him shall be refunded.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date:29-11- 2018
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