

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND**

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL No. 501 of 2013

Date: 16.11.2019

Between:

Ravula Mallaiah

... Appellant

and

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

...Respondent

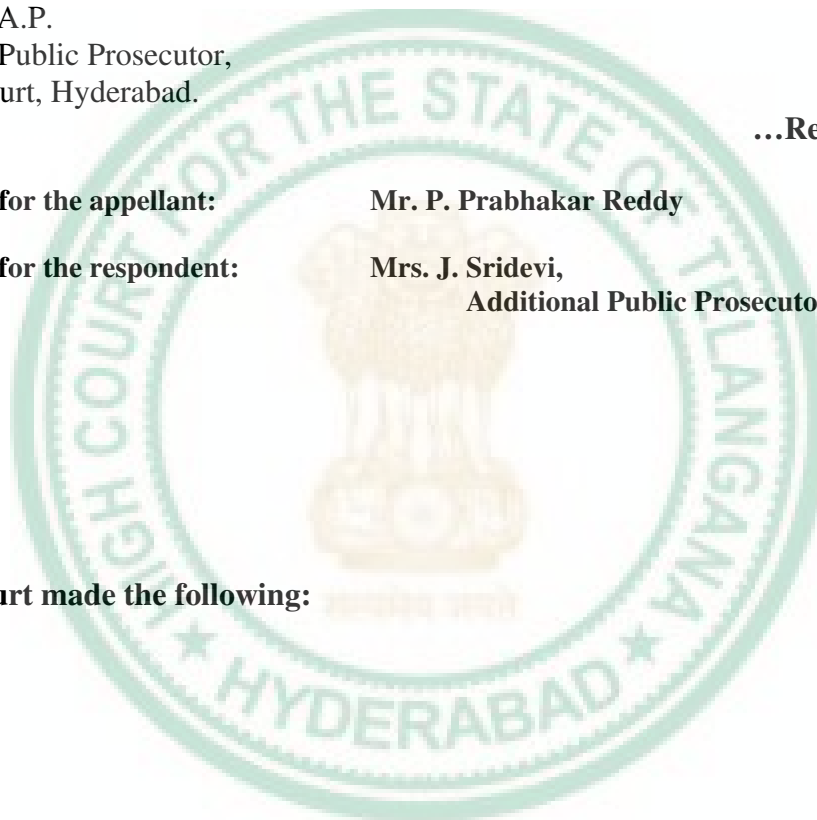
Counsel for the appellant:

Mr. P. Prabhakar Reddy

Counsel for the respondent:

**Mrs. J. Sridevi,
Additional Public Prosecutor.**

The Court made the following:



JUDGMENT: *(per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)*

The appellant (accused) has challenged the legality of the judgment dated 15.03.2013, passed by the II Additional Sessions Judge, Warangal, in S.C.No.469 of 2011, whereby the learned Judge has convicted the accused for the offence under Section 302 I.P.C., and sentenced him to undergo life imprisonment, imposed a fine of Rs.1,000/- and directed him to suffer simple imprisonment for a period of six months in default thereof.

Briefly the facts of the case are that on 29.03.2011, Ravula Janardhan (P.W.5) submitted a written report (Ex.P.4) before the Inspector of Police, Jangaon, wherein he claimed that *"today i.e., 29.03.2011, at about 11:00 hours, on coming to know that my younger brother, Ravula Mallaiah, aged 38 years, had admitted his wife, Ravula Vanaja, in Dr. M. Linga Reddy Hospital at Jangaon, for her delivery. Myself, my mother, and mother-in-law of my younger brother, Mallaiah went to Hospital operation theatre and sat there. At about 1:52 p.m., Dr. Inna Reddy told us that my sister-in-law, Vanaja, in her operation (sic), she gave birth to a female child, then, nurse, Leela, took that child and handed over to my mother-in-law, K. Lingamma, and went away. At about 2:30 p.m., my brother, Mallaiah, since his wife gave*

birth to a female child in her third delivery, got angry, took that child from his mother-in-law's hand forcibly, hit that child to a slope floor of that hospital, due to which, that child received injuries, and to save her, we took that child to Dr. Linga Reddy for treatment, who advised us to take that child to Hanamkonda. Immediately, we took that child in an ambulance to Hanamkonda, and while crossing Jangaon, at about 3:00 p.m., a person working in an ambulance told that child is dead, as such, immediately, we returned to hospital with that child. Since Ravula Mallaiah, Vanaja have already two female children again in third delivery also Vanaja gave birth to a female child, Ravula Mallaiah got angry for it, killed his born daughter (sic) by that act, and requested to take necessary action". On the basis of the said complaint, the police registered a formal FIR, namely, FIR.No.82 of 2011 for the offence under Section 302 IPC.

During the course of the investigation, the appellant was arrested, and was put up for trial. In order to support its case, the prosecution examined fifteen witnesses, submitted twenty-one documents, and produced one material object. The defence neither examined any witness, nor submitted any document in its favour. After appreciating the evidence, the learned trial Court

has convicted and sentenced the appellant as aforementioned.

Hence, this appeal before this Court.

Mr. P. Prabhakar Reddy, the learned counsel for the appellant-accused, has raised the following contentions before this Court:-

Firstly, although the prosecution has tried to project the case as a case of direct evidence, main witnesses of the prosecution, namely, Ravula Vanaja (P.W.1), Ravula Prameela (P.W.2), K. Lingamma (P.W.3) and Ravula Janardhan (P.W.5) have turned hostile. Therefore, they have not supported the prosecution case.

Secondly, the evidence of Dr. M. Inna Reddy (P.W.4) and Dr. Kasula Linga Reddy (P.W.11) cannot be relied upon as their evidence is merely hearsay evidence.

Lastly, the prosecution has projected different versions of the alleged incident. According to the prosecution, the first version is that the accused had killed the newborn child; the second version is that he had dropped the newborn child; the third version is that he had dropped the newborn child on the floor while handing the child over to K. Lingamma (P.W.3). Therefore, there is no cogent or convincing evidence to establish

that it is the accused who had actually killed the newborn child as he was suddenly saddled with the third daughter. Hence, the prosecution has failed to establish its case. Therefore, the conviction of the accused is clearly unjustified.

On the other hand, Mrs. J. Sridevi, the learned Additional Public Prosecutor, has pleaded that according to the testimony of Dr. M. Inna Reddy (P.W.4), there was a sudden commotion and the baby was brought before him with the complaint that the accused, who is the husband of Ravula Vanaja (P.W.1), had hit the newborn child against a ramp. Similar is the testimony of Dr.K. Linga Reddy (P.W.11).

Moreover, according to the post-mortem report (Ex.P.16), the newborn child had suffered six injuries, two fractures of occipital bone, and left parietal bone. Hence, the prosecution had well established the homicidal death of the child. Hence, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Ravula Vanaja (P.W.1) is the wife of the accused. According to her examination-in-chief, the newborn child had

died due to ill-health. She has been declared as hostile by the Public Prosecutor.

Ravula Prameela (P.W.2) is the mother of the accused. According to her, the accused suffers from the disease of fits. In her testimony, she informs the Court that *“We came to know that the accused dropped the said girl child on the floor and also he was said to have fallen on the ground. Then, my elder son, Janardhan, was called and he took the said child to another hospital but on the way, the said child died”*. Upon the testimony, she too has been declared as hostile.

K. Lingamma (P.W.3) is the mother-in-law of the accused. In her testimony, she informs the Court that *“Half an hour after the delivery, the accused took the new born female baby into his hands when I was sitting in the hospital and the accused went to the down stairs of the hospital. Thereafter, I do not know what happened but the said child died.”* This witness too has been declared as hostile by the prosecution.

Ravula Janardhan (P.W.5) is the complainant and the elder brother of the accused. According to him, he was informed by K.Lingamma (P.W.3) that *“the new born child fell on the ground. I was told that when P.W.3 was carrying the child and when she*

was coming, the child fell on the ground and that I immediately rushed. I took the said baby child in ambulance to Linga Reddy hospital. On the way, the child died and we brought back the child to Linga Reddy hospital.” This witness has also been declared as hostile by the prosecution.

Even the two independent witnesses, namely, Budutha Maheshwari (P.W.6), a nurse at Madhavi Nursing Home, Jangaon, and Vollangula Leela (P.W.7), another nurse at Madhavi Nursing Home, have turned hostile, and have not supported the case of the prosecution. In her testimony, Budutha Maheshwari (P.W.6) informs the Court that “*It appears that the deceased fell from the hands of P.W.3 and later on she was taken to Children hospital but the child was already dead*”. In her testimony, Vollangula Leela (P.W.7) informs the Court that “*After handing over the child, I left the place and later on, I heard commotion that the child fell on the ground and the child was brought before P.W.4 who advised them to take the child to children hospital.*” Thus, even these two independent witnesses have not supported the case of the prosecution.

Dr. M. Inna Reddy (P.W.4) claims that “*I returned to my O.P. Chambers and there was sudden commotion and the baby was brought before me complaining that the husband of P.W.1*

had hit the child against a ramp. The baby was in bad state and she was gasping and I referred the baby to pediatrician.” In his cross-examination, he readily admits that *“The people present at the time of incident told me that the father seized the child from the aaya and hit her on the ramp”*. Thus, it is clearly a testimony of hearsay evidence which cannot be accepted.

Likewise, Dr. Kasula Linga Reddy (P.W.11) claims in his examination-in-chief that *“The person who brought the baby is the brother of father of the baby. He told me that the father of the baby had thrown the baby on the floor and when I examined the said baby, the physical condition was very bad. I thought the baby would need some ventilation which was not available in our hospital. Therefore, I referred the baby to MGM Hospital, Warangal, and I advised that the baby should be taken in an ambulance and accordingly she was taken and later on, I came to know that the said baby died.”* Therefore, his testimony is based on hearsay evidence. However, his testimony has not been supported by the testimony of Ravula Janardhan (P.W.5). Therefore, even his testimony cannot be accepted in order to convict the accused.

According to Dr. Ch. Madhusudan (P.W.14), he had carried out the post-mortem of the dead body of the child. He discovered the following injuries on the child:-

1. *Contusion over the occipital area 10X6 cms. Bluish in colour*
2. *Laceration right axilla 4X1X1 cms. Blackish red*
3. *Laceration on the chest 2X1X1 cms. Blackish red*
4. *Abrasion over the neck 3X2 cms. Redish in colour.*
5. *Fracture of occipital bone present*
6. *Fracture of left parietal bone present*
7. *Subdural haemotoma on left parietal area.*

According to him, the cause of death was due to the head injury. He has prepared the post-mortem report (Ex.P.16). Thus, it is amply clear that the newborn child had died due to the head injury. However, it is unclear as to how the head injury was caused; it is equally unclear who caused the injuries, as the star witnesses have turned hostile in the present case.

It is highly unfortunate that the newborn child has lost her life, but the prosecution has failed to prove that the accused, who was the father of the child, had caused the death of the newborn child. Therefore, the benefit of doubt would have to be given to the accused.

For the reasons stated above, the appeal is, hereby, allowed. The judgment dated 15.03.2013, in S.C.No.469 of 2011 on the

file of the learned II Additional Sessions Judge, Warangal, is set aside. The appellant, Ravula Mallaiah, S/o Rangaiah, is acquitted of the offence under Section 302 I.P.C. Since the appellant is on bail, his bail bonds are cancelled.

As a sequel, miscellaneous petitions, pending if any, stand dismissed as infructuous.

Date: 16.11.2019

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

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