

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

Crl.A. No. 1177 of 2014

Date: 16-11-2019

Between:

Gaddala Raju

...Appellant/accused No.1

And

The State of A.P.,
Rep. by its Public Prosecutor
High Court of Judicature at Hyderabad
for the State of Telangana,
Hyderabad

...Respondent

Counsel for the appellant: Mr. Nazeer Khan

Counsel for the respondent: Mrs. Juvvadi Sridevi, APP

The Court made the following:

Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellant (accused No. 1) has challenged the legality of the judgment dated 27-08-2014, passed by the Principal Sessions Judge, Khammam, whereby, while acquitting accused No. 2, *namely* Gaddala Nagendra, the learned Trial Court has convicted the appellant (accused No. 1) for the offence under Section 302 IPC, sentenced him to undergo Life Imprisonment, and imposed a fine of Rs.1,000/- with default clause to suffer simple imprisonment for a period of one month. The learned Trial Court has also convicted accused No. 1 for the offence under Section 201 IPC, sentenced him to undergo simple imprisonment for a period of one year, and imposed a fine of Rs.1,000/- with default clause to suffer simple imprisonment for a period of fifteen days.

For convenience, the appellant shall be referred as accused No. 1.

Briefly, the facts of the case are that accused No. 1 was married to the deceased Smt. Soundarya (hereinafter referred

as 'the deceased') on 27-06-2011. Accused Nos. 2 and 3 are the mother and the younger sister of accused No. 1. According to Rayala Krishna (P.W. 2), the father of the deceased, at the time of the marriage, he had given an amount of Rs.70,000/-, and household goods towards dowry. During the Aashada Masam, he brought his daughter back to his house at Hyderabad. However, on 14-07-2011, accused No. 1 came to his house, and took the deceased back to his house at Gandugalapadu Village. Accused Nos. 1 to 3 started harassing the deceased for bringing additional dowry from her parents. The deceased informed her parents over the phone that she is being harassed by her husband, and his family members for additional dowry.

According to the prosecution, accused No. 1 suspected the chastity of the deceased. On 31-07-2011, accused Nos. 1 to 3 committed the murder of the deceased by throttling her neck with a chunni. In order to camouflage the crime, they hanged her body from the iron rod of the ceiling. On coming to know about the death of the deceased, the Village Revenue Officer, *namely* Netti Ananda Rao (P.W. 1), lodged a

written complaint (Ex. P.1) with the Police, wherein he claimed that, *“I received the information today i.e., on 31-07-2011 at 6:30 p.m., about the death of Smt. Soundarya, w/o Gadda Raju, at the house of Gaddala Raju in Gandugulapadu Village. The incident occurred at about 2:00 p.m. She committed suicide by hanging. On that I went to the house of Gaddala Raju at Gandagalapadu and I saw the dead body and noticed that Soundarya by threatening (sic) her with Chunni and banged her an iron rod of the Ceiling of her house and the dead body of Soundary lying on a cot in front of the house. I noticed the injury on her neck with a black scar. In my opinion she died a doubtful of her natural death.”(sic)*

On the basis of the said report, the Police Station, Wyra, chalked out a formal FIR, *namely* FIR. No. 106 of 2011, and began the inquest under Section 174 Cr.P.C. Subsequently, with the arrest of accused Nos. 1 to 3, the section of law was altered to Sections 302, 201 and 304-B r/w 34 IPC. Since accused No. 3, *namely* Modugu Divya, was a juvenile, she was put up for trial before the Juvenile Court. Accused Nos. 1 and 2 were put up for trial before the learned Trial Court. In order to support its case, the prosecution examined twelve witnesses, submitted seventeen

documents, and produced one material object. Subsequently, by the impugned judgment dated 27-08-2014, the learned Trial Court convicted and sentenced accused No. 1 for the offences under Sections 302 and 201 IPC, while acquitting accused No. 2 of the offences under Section 302 and 201 IPC as aforementioned. Hence, this appeal before this Court.

Mr. Nazeer Khan, the learned counsel for the appellant (accused No. 1), has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish its case against accused No. 1. For, a complete chain of circumstances, which would unerringly point towards the guilt of accused No. 1, has not been established by the prosecution.

Secondly, according to the Village Revenue Officer, *namely* Netti Ananda Rao (P.W. 1), he was informed about the death of the deceased by the village servant. However, the said village servant has not even been examined by the

prosecution. Therefore, the prosecution has withheld a material witness. Hence, adverse inference should be drawn against the prosecution.

Thirdly, according to the father of the deceased, *namely* Rayala Krishna (P.W. 2), when he reached the matrimonial home of his daughter, he did not find any of the accused persons including accused No. 1.

Fourthly, according to the prosecution, while the alleged incident took place on 31-07-2011, accused No. 1 was arrested after a delay of eleven days on 11-08-2011. Since there is no evidence produced by the prosecution to establish the fact that accused No. 1 was very much present in his house, when the alleged incident took place, there is no evidence to connect him to the alleged offence.

Fifthly, merely because accused No. 1 happens to be the husband of the deceased, there is no presumption of law that he is guilty of the murder of his wife. Hence, the entire case merely points to a strong suspicion against accused No. 1. But, no matter how strong the suspicion is, it cannot take the place of proof. Therefore, the prosecution has failed to

establish its case, even on the basis of preponderance, against accused No. 1.

Lastly, even Dr. K. Rajasekhar (P.W. 10), who conducted autopsy of the dead body, did not support the case of the prosecution. This witness had clearly stated in his examination-in-chief that either the deceased has committed suicide, or somebody might have murdered her. Once there are two interpretations of the same evidence, then the interpretation in favour of the accused should be accepted by the learned Trial Court. Therefore, the learned Trial Court has convicted accused No. 1 only on the basis of morality, but not on the basis of legal evidence. Hence, accused No. 1 deserves to be acquitted by this Court.

On the other hand, Mrs. Juvvadi Sridevi, the learned Additional Public Prosecutor, has vehemently raised the following counter contentions:-

Firstly, admittedly, the deceased died in her matrimonial home. Despite the death of his wife, accused No. 1 did not inform either her family members, or the police about her sudden demise. Moreover, according to the testimony of

Rayala Krishna (P.W. 2), when he reached the matrimonial home of his daughter, none of the family members, including accused No. 1, were seen. Thus, accused No. 1 fled away from the scene of the crime after having committed the crime. Furthermore, in the complaint (Ex. P.1), Netti Ananda Rao (P.W. 1), stated that he saw the body of the deceased lying on a cot in front of the house. Therefore, apparently, accused No. 1, after killing his wife, had left the body outside the house. Therefore, his silence about the sudden death of his wife speaks volumes about his guilt.

Secondly, the defence of suicide is belied by the fact that according to the Post-Mortem Report (Ex. P. 17), three of the ribs, *namely* rib nos. 8, 9 and 10, of the deceased were fractured. The right lung also had a laceration. Obviously, the deceased would not have fractured her own ribs, and only thereafter, committed suicide. Therefore, the prosecution has clearly established the fact that the deceased had died a homicidal death.

Lastly, despite the fact that the deceased had died in her own matrimonial home, accused No. 1, being her husband,

failed to give any explanation for her sudden death in his house. Hence, accused No. 1 has failed to discharge his burden under Section 106 of the Indian Evidence Act, 1872 (for short 'the 1872 Act'). Thus, the learned Additional Public Prosecutor has supported the impugned judgment.

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

In the case of **Padala Verabira Reddy v. State of Andhra Pradesh**¹, the Hon'ble Supreme Court has prescribed the principles for appreciation of evidence in a case of circumstantial evidence as under:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be

¹ 1989 Supp (2) SCC 706

consistent with the guilt of the accused but should be inconsistent with his innocence.”

Therefore, the prosecution is legally bound to establish each and every link of the evidence, which would form a complete chain of circumstances unerringly pointing to the guilt of the accused. There should not be any circumstance, which would support the innocence of the accused. Moreover, suspicion no matter how strong, cannot take the place of proof. It is the cardinal duty of the prosecution to cover the distance between ‘may be true’ and ‘must be true’. The prosecution can cover this long distance only by producing cogent and convincing evidence. In case the prosecution does not examine the material witnesses, then adverse inference has to be drawn against the prosecution.

Netti Ananda Rao (P.W. 1) stated in his examination-in-chief that he was working as the Village Revenue Officer, Khanapuram. He worked as the Village Revenue Officer of Gandugalapadu Village during the year 2010 to 2011. He claimed that, *“on 31-07-2011, at about 2:00 p.m., I received information from my village servant about the death of Smt. Sowndarya*

at the house of Gaddala Raju in Gandugalapadu Village. On that I went there and saw the dead body.” In his cross-examination, he further claimed that when he went to the house of the deceased, the public had already gathered. He claims that he gave the report to the Police. Although this witness claims that he was informed by the village servant, the village servant has not been examined by the prosecution. Thus, the prosecution has withheld the material witness.

According to Rayala Krishna (P.W. 2), the father of the deceased, on 16-07-2011, he sent his daughter Soundarya with accused No. 1. According to this witness, *“About four days thereafter, my daughter telephoned to me that A-1, A-2 and sister of A-1 Divya demanding additional dowry. I consoled her stating that I will visit in four days and settle the matter and not to have any godavas (disputes)”*. Furthermore, according to this witness, *“Within four or five days of such telephone, Sir T. Ramesh informed to me that my daughter was admitted in hospital after a quarrel between the wife and husband. On that myself, my wife and my son started from Hyderabad and my eldest daughter from Guntur. We went to the house of the accused and noticed the deadbody of my daughter is laying on a cot. I noticed there is none at the dead body of my daughter”*.

Thus, according to this witness, by the time he reached the matrimonial house of his daughter, neither the accused, nor his family members were present.

Admittedly, the accused were not arrested till 11-08-2011. Moreover, there is no evidence produced by the prosecution to show that accused No. 1 was available at his house on the fateful day of 31-07-2011. In fact, Boddu Venkati (P.W. 4) and Thudum Jaya (P.W. 5), both neighbours of the deceased, have turned hostile, and have not supported the case of the prosecution. Thus, there is no evidence to show that accused No. 1 was present at his house on the fateful day. Hence, the learned Trial Court is unjustified in presuming that it is accused No. 1, who, being the husband, had committed the alleged offence.

Since there is no evidence to show that the accused No. 1 was present at the house on the fateful day, he cannot be fastened with the burden of proof under Section 106 of the 1872 Act. It is sufficient for the accused to maintain silence. For, it is the foremost duty of the prosecution to lay

the foundation of its case before the burden can be shifted upon the accused under Section 106 of the 1872 Act.

Admittedly, the deceased had suffered injuries sufficient to cause the fracture of three ribs. Admittedly, according to the Post-Mortem Report (Ex. P.17), there was a laceration on her right lung, but it is absolutely unclear as to who has caused the ante-mortem injuries on the deceased. Therefore, although it is unlikely that the deceased had committed suicide, but the prosecution has failed to prove that accused No. 1 is the author of the injuries and has caused the death of the deceased.

Needless to say, a conviction has to be based on cogent and convincing evidence, and not on morality. In the absence of cogent and convincing evidence, the learned Trial Court has convicted accused No. 1 on the basis of surmises and conjectures. Hence, it is a moral conviction, and not a legal one.

For the reasons stated above, the benefit of doubt would have to be given to accused No. 1.

Therefore, the Criminal Appeal is allowed. The impugned judgment dated 27-08-2014, passed by the learned Principal Sessions Judge at Khammam, in S.C. No. 442 of 2013, whereby the appellant (accused No.1), *namely* Gaddala Raju, s/o Venkati, was convicted and sentenced for the offences punishable under Sections 302 and 201 IPC, is set aside. The fine amount, if any, paid by him shall be refunded to him. Consequently, the appellant (accused No.1), *namely* Gaddala Raju, s/o Venkati, shall be set at liberty forthwith, if he is not required in any other case or crime.

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

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 16-11-2019
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