

BAIL SLIP : The Appellant / Accused was directed to be released on bail by the Order of the High Court dated 08-08-2023 made in I.A.No.1 of 2021 in CrI.A.No.547 of 2017

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI**

CRIMINAL APPEAL NO: 547 OF 2017

Appeal under Section 374 (2) of Cr.P.C. against the Judgment dated 15-05-2017 made in S.C.No.580 of 2011 on the file of the Court of the VI Additional District Judge, Mahabubabad.

Between:

Vankudoth Malluka, W/o. Ramesh, Aged about 29 years, Lambada, R/o. Thotadasru Thanda, H/o. Gudur Village, Warangal District

...Appellant / Accused

AND

The State of Telangana, through C.I. of Police Gudur, District Warangal, Rep. by Public Prosecutor, High Court of Judicature, at Hyderabad, for the State of Telangana and the State of Andhra Pradesh

...Respondent / Complainant

Counsel for the Appellant : Sri Shaik Karimulla

**Counsel for the Respondent : Sri Arun Kumar Dodla
Additional Public Prosecutor**

The Court delivered the following Judgment :

**THE HON'BLE SRI JUSTICE K.SURENDER
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

CRIMINAL APPEAL No.547 OF 2017

JUDGMENT: *(per Hon'ble Sri Justice K.Surender)*

This Criminal Appeal is filed aggrieved by the judgment dated 15.05.2017 passed in S.C.No.580 of 2011 on the file of VI Additional District Judge, Mahabubabad, convicting and sentencing the appellant/accused to undergo imprisonment for life and to pay fine of Rs.10,000/- and in default of payment of fine, to suffer simple imprisonment for one month.

2. Heard Sri Shaik Kareemullah, learned counsel for the appellant/accused, and Sri Arun Kumar Dodla, learned Additional Public Prosecutor for the respondent-State.

3. The appellant is the mother of the deceased boy. According to the prosecution, on the date of incident i.e., on 21.11.2010, PW.1, who is the husband of the appellant/accused, six years old son along with the deceased boy, who was one year old, were all in the house. PW.1 went to the fields at 8:30 A.M., and within half-an-

hour, PW.2, who is the mother of PW.1, found that the deceased boy was crying uncontrollably and froth was coming out of his mouth. PW.2 ran to the fields where PW.1 was working and informed that the appellant/accused, wife of PW.1, poured insecticide in the mouth of the deceased boy. On hearing the same, PW.1 immediately went to the house and took the deceased boy to the hospital, where the boy was declared as brought dead.

4. The body of the deceased boy was subjected to post mortem examination. The Doctor, who conducted post mortem examination, gave opinion that the boy died on account of Cardio Respiratory Failure due to suspicious poison. Ex.P13 is the report issued by the Forensic Science Laboratory, which confirms that insecticide poison was found in the viscera, which are pieces of stomach, liver and intestine.

5. Learned Sessions Judge found that the appellant/accused had poured insecticide poison in the mouth of deceased boy and accordingly convicted the appellant/accused.

6. There are no eye witnesses to the incident. However, according to PW.1, the husband, he left for work to his fields at around 8:30 A.M., leaving the appellant/accused and the deceased boy. Within half-an-hour, PW.2 - mother of PW.1 went to the fields crying and informed that the appellant administered insecticide poison to the deceased boy.

7. The case is one of circumstantial evidence. The main circumstance relied on by the prosecution is that the appellant was present in the house when PW.1 left and within half-an-hour the deceased boy was found by PW.2, crying and froth was coming from out of his mouth. It is not disputed by the appellant that she along with PW.1 were staying separately with children. However, the defence of the appellant is that she was not present in the house. In fact, divorce was given to her by her husband- PW.1 and as such the question of administering poison to the child does not arise.

8. Ex.D1 is agreement, dated 23.08.2009, entered in between PW.1 and the appellant/accused. In the said agreement, PW.1 agreed to pay -Rs.1,00,000/- to the

appellant, since PW.1 married another woman. According to Ex.D1, Rs.80,000/- had to be given to the child who was yet to be born (the deceased child). Ex.D2 is dated 19.02.2012, which is the Divorce Deed entered between the appellant and PW.1.

9. Learned counsel appearing for the appellant/accused would submit that there are no eye witnesses to the incident. Further, it was suspicion which prompted PW.1 to lodge a complaint. PWs.1 and 2 and other witnesses state that they suspected the appellant of administering poison into the mouth of the deceased boy. There is possibility of a third person entering into the house and administering poison to the child.

10. On the other hand, learned Additional Public Prosecutor would submit that the mother was taking care of the child and there is no evidence of third person entering into the house, after PW.1 left the house.

11. Ex.D1 is an agreement, which was entered into by PW.1 and the appellant/accused. According to the said agreement, PW.1 married another woman and the

appellant who is his first wife was carrying six months pregnancy, and that money would be given to the child. It appears that there were differences on account of PW.1 marrying another woman during pregnancy of the appellant. Though Ex.D1 was drafted, which is an agreement between PW.1 and the appellant before the elders, the fact remains that the relationship between PW.1 and the appellant was strained. Further, they were living in the same house.

12. The appellant/accused is the mother of the deceased boy. The fact remains that she was in the house when the incident took place. Under Section 106 of the Indian Evidence Act, 1872, the burden would be on the appellant to prove under what circumstances, the child, who was one year old, died of poison. Though there was knowledge on the part of the appellant, it cannot be said that she had intent to commit murder of her own child. PW.1 divorced the appellant while she was carrying pregnancy of six months and married another woman.

13. In the facts of the present case, we deem it appropriate that the conviction under Section 302 IPC has to be set aside, while convicting the appellant/accused under Section 304 Part I IPC.

14. Accordingly, the Criminal Appeal is partly allowed. The sentence of imprisonment is reduced to the period already undergone by the appellant/accused.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

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Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The VI Additional District Judge, Mahabubabad (with records, if any)
2. The Judicial First Class Magistrate, Narsampet, Warangal District
3. The Circle Inspector of Police, Gudur, Warangal District
4. The Superintendent, Central Prison, Warangal
5. The Superintendent, Women's Prison, Central Prison, Chanchalguda, Hyderabad
6. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
7. One CC to Sri Shaik Karimulla, Advocate [OPUC]
8. Two CD Copies

VA/gh



HIGH COURT

DATED:31/12/2024

JUDGMENT

CRLA.No.547 of 2017



PARTLY ALLOWING THE CRLA

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