IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE TWENTY SIXTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE K. SARATH

CRIMINAL APPEAL NO: 2608 OF 2018

Appeal under Section 374 (2) of Cr.P.C. against the Judgment dated 25-07-2018 made in S.C.No.30 of 2017 on the file of the Court of the Special Sessions Judge for Trial of Cases under the SCs & STs (POA) Act-cum-V Additional Sessions Judge, Medak at Sangareddy, FAC: VII Additional Sessions Judge, Medak at Sangareddy.

Between:

Smt. Katravath Shanthi @ Kitti, W/o. Narender, Aged about 37 years, Occ. Water Business, R/o. Pedda Thanda, Ilapur Village, Patancheru Mandal, Medak District

...Appellant / Accused No 1

AND

The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad

...Respondent / Complainant

IA NO: 1 OF 2024

Petition under Section 430 (1) of BNSS praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence passed in S.C.No. 30 of 2017 dated 25/07/2018 on the file of the Special Judge for SC/ST POA Act-cum-V Additional Sessions Judge, Medak at Sangareddy, FAC: VII Additional District and Sessions Judge, Sanga Reddy and release the petitioner on bail, pending disposal of the Crl.A.No. 2608 of 2018 on the file of this Hon'ble Court.

Counsel for the Appellant	:	Sri Kadiyam Neelakanteswara Rao
Counsel for the Respondent	:	Sri M Vivekananda Reddy Additional Public Prosecutor

The Court delivered the following Judgment :

THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SRI JUSTICE K.SARATH

CRIMINAL APPEAL NO.2608 OF 2018

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

This Criminal Appeal is filed by the appellant-accused No.1 aggrieved by the Judgment, dated 25.07.2018, in Sessions Case No.30 of 2017 passed by the learned VII Additional Sessions Judge, Medak at Sangareddy, whereby she was found guilty of the offences punishable under Sections 302 and 201 of I.P.C. and accordingly, she was convicted and sentenced to undergo Life imprisonment and also to pay an amount of Rs.5,000/- towards fine for the offence punishable under Section 302 I.P.C, in default to undergo rigorous imprisonment for a period of one year and to undergo rigorous imprisonment for a period of seven years and to pay an amount of Rs.5,000/- towards fine for the offence punishable under Section 201 of I.P.C, in default to undergo rigorous imprisonment for a period of six (6) months.

2. Heard Sri Kadiyam Neelakanteswara Rao, learned counsel appearing for the appellant-accused No.1 and Sri M.Vivekananda Reddy, learned Additional Public Prosecutor appearing for the respondent-State.

3. According to the prosecution case, P.W.1 lodged a complaint, dated 25.12.2015, wherein it is stated that his brother Narender (hereinafter referred to as, 'the deceased'), husband of the appellant-accused No.1, owned Ac.0-30 guntas of land in Survey No.119 on the outskirts of their Village. Due to shortfall of rain, the agricultural land became dry. Therefore, the deceased dug a ditch beside the bore-motor, built sump and supplied water from bore-motor to sump to sell water through tankers and earn money. The appellant-accused No.1 raised a cement shed beside the sump and was living in the shed selling water, but, she did not give money to the deceased. There were quarrels between them about money received from selling water. Deceased questioned the appellant-accused No.1 as to why she had raised a shed, got angry with her and damaged the shed. On 24.12.2015 a panchayat was held

and elders convinced both the deceased and the appellant-accused No.1 to live amicably. However, on the next date i.e., on 25.12.2015 at 6:00 AM., P.W.1 came to know that the deceased's dead body was lying in the water sump. He suspected that the appellant-accused No.1 was responsible for the death of the deceased.

4. On the basis of complaint filed by P.W.1, P.W.11, Inspector of Police registered a case and issued Ex.P.17-First Information Report. Police went to the scene and conducted scene of offence panchanama, which is Ex.P.18. Ex.P.19 is the rough sketch. Panchanama was conducted by police, seized M.O.1 – one pair of black colour chappal and M.O.5-Iron piece. The dead body of the deceased was sent for post-mortem examination after inquest proceedings. P.W.10 is the Doctor, who conducted autopsy over the dead body of the deceased and opined that the cause of death was on account of head injury. He further stated that he found ten ante-mortem external injuries and also internal injuries on the dead body of the deceased and he issued Ex.P.16-Report.

5. On the basis of investigation done and after recording statements of witnesses, charge sheet was filed against the appellant-accused No.1 and other accused for the offences under Sections 302 and 201 of I.P.C. Thereafter, as the appellant-accused No.1 and the other accused were not complicit in committing the murder of the deceased, the learned Sessions Judge found that accused Nos.2 to 4 were not guilty of the said offences and accordingly, acquitted them while convicting the appellant-accused No.1, wife of the deceased.

6. P.W.1, who is brother of the deceased and lodged Ex.P.1-complaint, was declared hostile to the prosecution case. He stated that somebody might have killed the deceased and thrown the dead body in the water sump. P.W.2 is sister of the deceased. She stated that the appellant-accused No.1 had killed the deceased. However, she did not witness the actual incident. P.W.3 states that there were panchayats held between the deceased and the appellant-accused No.1 on 24.12.2015 and the elders advised them to live amicably. However, on the next date

i.e., on 25.12.2015 the dead body of the deceased was found in the water sump. P.W.4 deposed on the similar lines as stated by P.W.3. P.W.5 is the photographer, who took photos of the dead body of the deceased. P.W.6 is the witness for inquest proceedings and scene of offence panchanama. P.W.6 was declared as hostile by the prosecution. P.W.7 is the panch witness to the confession-cum-seizure of M.O.4-stick from accused No.3. P.W.8 is another panch witness for confession of accused and he was declared hostile to the prosecution case. P.W.9 is also witness for confession of accused and he was declared hostile. P.W.10 is the Doctor, who conducted autopsy over the dead body of the deceased. P.W.11 is the Inspector of Police, who received complaint from P.W.1 and proceeded to scene of offence.

7. P.W.12 took over investigation from P.W.11, arrested accused Nos.1, 2 and 4 on 31.12.2015 and accused No.3 on 03.01.2016. P.W.13 is the elder sister of the deceased, who turned hostile. P.W.14 is also brother of the deceased, who turned hostile to the prosecution case.

P.W.15 is the Inspector of Police, who took over investigation from P.W.12 and having verified the investigation done by P.W.12, filed charge sheet. No independent investigation was done by P.W.15. P.W.16 was also examined by police and in his presence they conducted scene of offence-cum-seizure panchanama and also inquest panchanama over the dead body of the deceased and obtained his signatures. But, he was declared as hostile by the prosecution.

8. As already stated, the alleged collusion of appellant-accused No.1 and accused Nos.2 to 4 to murder the deceased was not made out during the course of trial. None of the witnesses have stated anything about any assault by the appellant-accused No.1 or that the appellant-accused No.1 was staying along with the deceased on the outskirts of their Village prior to the dead body of the deceased being found. None of the witnesses have seen the appellant-accused No.1 with the deceased, the day prior to the death of the deceased. The only evidence in the case is that of P.Ws.2 to 4 who stated that

there was a panchayat held, due to disputes in between the appellant-accused No.1 and the deceased. They were asked to live amicably by the panchayat elders.

9. The investigation reveals that the appellant-accused No.1 with the help of accused Nos.2 to 4 committed murder of the deceased. However, since there was no evidence against accused Nos.2 to 4, their involvement was not believed by the trial Court and they were acquitted. Similar is the case of the appellant-accused No.1 also. Apart from the evidence of P.Ws.2 to 4 stating that there was a panchayat, absolutely there is no other evidence to connect the appellant-accused No.1 with the murder of the deceased. It is not the case that anyone has seen the appellant-accused No.1 near the scene prior to the death of the deceased and after the panchayat was held.

10. Learned Public Prosecutor argued that the presumption has to be drawn against the appellant-accused No.1 that she committed murder of the deceased since she is the wife. The said argument cannot be

accepted. Even according to the prosecution case, the incident happened on the outskirts of the Village near the sump. The temporary structures, which were erected by the appellant-accused No.1, were destroyed by the deceased. As already discussed none of the witnesses stated about the appellant-accused No.1 and the deceased staying together on the outskirts of their Village after the panchayat was held. Since it is an open place and there is no evidence to substantiate that the appellant-accused No.1 stayed along with the deceased after panchayat was held, question of drawing presumption that the appellant-accused No.1 was responsible for murder of the deceased, cannot be accepted.

11. Further, to draw presumption under Section 106 of the Indian Evidence Act, 1872 (for short, 'the Act, 1872') the prosecution has to lay foundation to draw such presumption. The only circumstance narrated by the witness is that there was a panchayat held on the previous day of the dead body being found in the water sump. The only circumstance of the panchayat being held, does not in

any manner lay foundation to shift the burden on to the appellant-accused No.1. It is not a case where the appellant-accused No.1 and the deceased were staying together as husband and wife and the husband was found dead. The incident happened on the outskirts of their Village near water sump. The presumption under Section 106 of the Act, 1872, cannot be drawn.

12. The other evidence relied upon by the prosecution is insufficient even to raise suspicion that it was appellant-accused No.1, who had committed the murder of the deceased.

13. Accordingly, the Criminal Appeal is allowed and conviction and sentence recorded *vide* Judgment, dated 25.07.2015, in Sessions Case No.30 of 2017 passed by the learned VII Additional Sessions Judge, Meddak at Sangareddy, against the appellant-accused No.1 for the offences punishable under Sections 302 and 201 of IPC are set aside and accordingly, she is acquitted for the said offences. The fine amount, if any, paid by the appellant-accused No.1 shall be refunded to her. The appellant-

accused No.1 shall be released forthwith, if she is not required in any other case.

Miscellaneous petitions, if any, pending shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Sessions Judge for Trial of Cases under the SCs & STs (POA) Act-cum-V Additional Sessions Judge, Medak at Sangareddy, FAC: VII Additional Sessions Judge, Medak at Sangareddy (with records, if any)
2. The VII Additional Sessions Judge, Medak at Sangareddy
3. The Judicial First Class Magistrate, Special Mobile Court, Sangareddy
4. The Station House Officer, Patancheru PS, Medak District
5. The Superintendent, Special Prison for Women, Chanchalguda, Hyderabad
   (By Special Messenger)
6. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
7. One CC to Sri Kadiyam Neelakanteswara Rao, Advocate [OPUC]
8. Two CD Copies

VA

HIGH COURT

DATED:26/12/2024



JUDGMENT

CRLA.No.2608 of 2018

ALLOWING THE CRLA

(11)

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30/12/24.