
(2014) 02 AP CK 0028
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1339 of 2009

Darla Jogiraju

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2014) 02 AP CK 0028

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : T.V. Sridevi, Advocate for the Appellant

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The sole accused in S.C. No. 4 of 2009 on the file of the VII Additional District and Sessions Judge, (Fast Track Court), Visakhapatnam, was tried for the offence of committing murder of his wife - Laxmi, on 21.08.2008 at 7.30 P.M., in Janakayyapeta Village, Nakkapalle Mandal, Visakhapatnam District. It was alleged that the accused was married to the deceased, the daughter of PW.1 and sister of PW.2, four years prior to the incident, but he used to harass her sometimes by suspecting her character. Panchayats were also said to have been held.

2. PW.3 is a resident of the same village. He is said to have seen the accused and the deceased in the fields at about 5.30 P.M., and that when he went to the fields at 7.30 P.M., he found the accused running away with a sickle in his hand, and proceeding further, he noticed the dead body of the deceased. He is said to have seen the footwear and some other articles, such as, a bag, which contains gingelly seeds, and ear buds upon the body of the deceased. He is said to have informed the same to the villagers.

3. PW.1, father of the deceased, submitted a complaint at 8.00 A.M., on the next

day, before the Police Station Nakkapalli. Crime No. 53 of 2008 was registered u/s 302 I.P.C., alleging offence against the accused. The scene of offence panchanama was drawn and inquest and post-mortem were caused and on the basis of further investigation, charge sheet was filed. After the committal procedure was completed, the trial Court framed the following charges and conducted trial:

That you married your wife the deceased Laxmi four years back, and lived happily for two years, later you developed baseless suspicion over the fidelity of your wife and used to beat her often and criticizing whenever she had occasional conversation with male and subjected her to cruelty and that you thereby committed an offence punishable u/s. 498A of the Indian Penal Code, and within my cognizance.

That you on 21.08.2008, in the evening at about 7.30 p.m., did commit murder of your wife Laxmi intentionally cut the throat of the deceased with a sickle and killed her causing the death of your wife and that you thereby committed an offence punishable u/s. 302 of the Indian Penal code, and within my cognizance.

4. On behalf of the prosecution, PWs.1 to 9 were examined and Exs.P.1 to P.15 were filed. M.Os.1 to 5 were taken on record. The contradiction in the statement of PW.1 recorded u/s 161 Cr.P.C., was marked as Ex.D.1.

5. The trial Court recorded a finding to the effect that the accused committed murder of the deceased, and accordingly, imposed the sentence of imprisonment for life and fine of Rs. 5,000/-, in default to undergo RI for six months.

6. Smt. T.V. Sridevi, learned counsel for the appellant, submits that the only witness, who is said to have seen the accused and the deceased together, was equivocal on several respects. She contends that, once PW.3 is said to have come back at 5.30 P.M., he did not explain as of what made him to go to the fields, once again in the night. She contends that the evidence of PW.3 is not clear as to whom he informed about what he is said to have seen. She contends that PW.3 did not state that he informed the incident to PW.4, the Sarpanch, and still the latter acted as though he received information from PW.3. She further contends that though PWs.4 and 5 are said to have passed on the information to the police, PW.9 - the Investigating Officer, categorically stated that none of them have furnished such information. She submits that when such is the contradiction and lack of clarity, it is not at all possible to hold the accused guilty of committing the offence.

7. Learned Public Prosecutor, on the other hand, submits that the prosecution has established with cogent evidence, that the accused committed murder of the deceased. She submits that if one takes into account, the suspicion expressed by the accused vis-?-vis his wife and conducting of panchayats and that the factum of having been seen last together by PW.3, the inescapable conclusion is that the accused committed murder of the deceased.

8. PW.3 is said to be the first person to have noticed the occurrence of offence. He cannot be treated as an eyewitness. The reason is that even according to him, he first saw the accused and the deceased together at 5.30 P.M., in the fields, and when he went to that place once again at 7.30 P.M., he saw the accused, with a sickle. It was not even mentioned that the accused was either running or was found in a suspicious condition. PW.3 is said to have proceeded further and found the dead body of the deceased. He did not offer any explanation as to what was the reason for him to go to the fields at 7.30 P.M., once he came from the fields at 5.00 P.M. He did not mention as to whom he informed about the incident. His statement is vague and general, in this behalf. He was extensively cross-examined and it was elicited from him that he did not go near the dead body at all. According to him, he saw the dead body from a distance of three meters.

9. PW.4, the Sarpanch of the village, stated that he received information about the death of the deceased from PW.3, who in turn, passed on the same to the ZPTC Member, PW.5. It is PW.5, who is said to have informed the incident to the police. PW.4 made an attempt to state about the differences between the accused and the deceased and holding of panchayats. PW.5, ZPTC member, stated that on receiving phone call from PW.4, he passed on the information to the police and himself and police went to the spot during night itself. If that were to be so, the first step that the police ought to have taken is to register a case, as soon as they have seen the dead body. That, however, is not the case here. PW.9, the Investigating Officer, stated that he did not receive any information from PWs.4 and 5 obviously meaning thereby that the first source of information was Ex.P.1, that was submitted at 8.00 A.M., on the next day. It has already been mentioned that PW.5 stated that the police visited the village on the same night and came back. To be precise, this is what PW.5 stated:

Later we went to the spot and visited the dead body of the deceased. Later police came there and went away and on next day police again came there and drafted the report. Later on 24th in the mid day hours at 3.30 P.M., police came to the village and stated to me and also G. Simhachalam that accused was in the neighbouring village hence they requested to accompany them.

10. Similarly, PW.4 stated as under:

One Devara Appalaraju came to me and informed, when he proceeded to his field, in the nearby fields he heard cries and found Lakshmi fell on the grounds in death condition. Then the accused ran away towards the fields. Then we telephoned to the ZPTC. After reaching of ZPTC we telephoned to the Police station and went to the fields and visited the dead body. Later police came there. Then they informed that they will come in the morning hours. They came to the spot at about 8-00 A.M. I accompanied.

11. When PW.3 did not state that he saw the accused running, or that he heard the cries of the deceased, the statement of PW.4 in that behalf is an

improvement, if not concoction. The version of PWs.4 and 5 is belied from the following statement of PW.9:

PWs.4 and 5 did not inform to the police station about the death of the deceased on the date of incident. It is not true to suggest that on the night itself the accused was taken away by the police. It is not true to suggest that PW.1 informed me that by the side of the dead body of his daughter the sickle was found and intentionally I did not note the above fact.

12. If what PWs.4 and 5 have stated is true, there was a clear lapse on the part of the police. They ought to have posted a constable for protection of the dead body. If, on the other hand, the police became active only on receiving Ex.P.1, the evidence of PWs.4 and 5 turns out to be an utter falsehood. When such is the wide gap as regards the very source of information, one can just understand the difficulty in connecting the accused, to the crime.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 4 of 2009 on the file of VII Additional Sessions Judge (Fast Track Court), Visakhapatnam, dated 25.09.2009, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith, unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-accused shall be refunded to him.

14. The miscellaneous petition filed in this appeal shall also stand disposed of.