
(2007) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 112 of 2005

Gogu Narasamma

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 209, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 2 ALD(Cri) 553 : (2007) CriLJ 4787

Hon'ble Judges : T. Meena Kumari, J;G. Chandraiah, J

Bench : Division Bench

Advocate : Vasudha Nagaraj, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

T. Meena Kumari, J.—The present Criminal Appeal is preferred against the calendar and judgment passed by the learned Prl. Sessions Judge, Nalgonda in S.C. No. 213 of 2003 dated 20-8-2004 convicting and sentencing accused to undergo Imprisonment for Life and to pay a fine of Rs. 1.000/- in default to undergo Simple Imprisonment for three years.

2. The case of the prosecution in brief is follows:

One Shankaraiah lodged a report with the police on 20-12-2002 complaining that on 19-12-2002 at about 11-00 hours when he returned back home, he came to know that his wife Narsamma killed their 2nd daughter, Madhavi, aged 8 years by strangulation, he found a rope and ligature marks around the neck of deceased Madhavi. Basing on his report, the police registered a case in Crime No. 76 of 2002 u/s 302 Indian Penal Code, issued First Information Report, and held inquest over the dead body of Madhavi, which was subjected to post mortem examination which revealed that she died due to asphyxia on account of strangulation by ligature. Investigation revealed that Narsamma disliked her husband's proposal to marry her 2nd daughter Madhavi with fostered son of his

sister Anjamma and challenged that she would rather kill Madhavi than perform the marriage of her daughter with the fostered son of Anjamma. So, her husband took both their daughters to Hyderabad and kept them with his parents but on insistence of his wife, he brought back Madhavi alone back to his village. Suspecting that her husband may perform marriage of Madhavi with the fostered son of Anajamma and nephew of her husband, on 19-12-2002 at about 2 p.m. while her husband was away, she strangled Madhavi by a plastic wire and killed her. Police arrested her on 2-1-2003 and sent for remand. Thereafter, on completion of investigation, the Circle Inspector of Police laid a charge-sheet against her for an offence u/s 302 Indian Penal Code.

3. The learned Judicial Magistrate of First Class, Ramannapet after compliance of Section 207 of Criminal Procedure Code has committed the case to the Court of Session, Nalgonda u/s 209 Criminal Procedure Code for trial as the offence punishable u/s 302 Indian Penal Code is exclusively triable by Court of Session and the learned Sessions Judge, Nalgonda has numbered the same as S.C. No. 213 of 2003 against the accused.

4. On appearance of the accused, a charge u/s 302 Indian Penal Code has been framed, read over and explained to her and on examination, she pleaded not guilty.

5. In order to substantiate its case, the prosecution has examined as many as 11 witnesses and marked Exs. P-1 to P-9 and M.O. 1, was marked. Accused was examined u/s 313 of Criminal Procedure Code with the Incriminating evidence adduced by the prosecution against her.

6. The learned Sessions Judge after taking into consideration both oral and documentary evidence has convicted and sentenced the accused as stated supra.

7. P.W. 1 is the father of the deceased. He deposed that he lodged Ex. P-1 original complaint after returning back home from Bhongir, when he came to know about the infanticidal death of his daughter Madhavi by the accused, he and P.Ws. 2 and 3 have testified about the motive for the accused to do away with her daughter as she opposed the proposal made by him to perform the marriage of the deceased Madhavi with Mahesh, son of P.W. 2 and nephew of P.W. 1 and even challenged that she would rather kill Madhavi than marry her to Mahesh.

8. P.W. 4 deposed that on the date of the incident at about 2 p.m. when he and his wife P.W. 5 and a neighbour P.W. 6 were talking by engaging himself in weaving, the accused surprised them by visiting his house and told them that her daughter Madhavi was not talking. He further deposed that when all of them went to her house and saw her daughter lying flat front downwards, on touching her body, he felt it to be cool and on enquiry, the accused told him by weeping that she killed her daughter by strangulating her with a rope. He deposed that he found black scars around the neck of Madhavi's dead body. He deposed that the police recorded his statement, P.Ws. 5 and 6 further deposed that they were

along with P.W. 4 when the accused made an extrajudicial confession about killing of her daughter by strangulation, they being women-folk, the accused being niece of P.W. 5 and friend of P.W. 5 did not speak about the accused having made any confession, but. they have deposed that they were in the house of P.W. 4 when the accused surprised them by visiting the house of P.Ws. 4 and 5 and called P.Ws. 4 and 5 stating that her daughter was doing strange things. They further deposed that all of them ran to her house, checked her pulse, which was missing and her body was cool. P.W. 5 further deposed that she saw ligature marks around her neck and accused alone was in the house at that time. P.W. 6 also deposed to the same effect.

9. P.W. 9 is the Medical Officer, who conducted post-mortem examination over the dead body of the deceased and found the following injuries.

1. Abrasion on right cheek 2 x 1 cm.

2. Well defined 20 cms. Length, 3 cm. Width ligature mark all around the neck except the nape of the neck. The ligature mark present below the thyroid cartilage, Ligature mark more thick, prominent on the front of the neck. Skin was damaged on ligature mark region. Right side ligature mark, more thick and tough.

10. The doctor noted corresponding ligature mark of M.O. 1 type of plastic wire usually used for caning chairs.

11. P.Ws. 10 and 11 are the Investigating Officers who did the investigation in this case. P.W. 10 deposed that on receipt of Ex. P-1 from P.W. 1. he registered the same as a case in crime No. 76 of 2002 u/s 302 of Indian Penal Code and issued Ex. P-9 First Information Report to all the concerned, he examined and recorded the statement of P.W. 1 and visited the scene of offence, where he conducted scene of offence panchanama in the presence of P.W. 7 and another under Ex. P-4, he examined P.Ws. 2 to 6 and recorded their statements. He further deposed that on the same day he conducted inquest panchanama Ex. P-6 over the dead body of the deceased in the presence of P.W. 7 and another and also draw Ex. P-5 rough sketch of scene of offence.

12. P.W. 11 is another investigating officer who deposed that on 23-12-2002 to took up the investigation in this case from P.W. 10 and on 2-1-2003 he arrested the accused and recorded her confessional statement in the presence of P.W. 8 and another and recorded M.O. 1 plastic wire from the possession of the accused under Ex. P-7 panchanama and sent the accused for judicial custody. He further deposed that on completion of investigation he filed the charge-sheet.

13. Heard the learned Counsel for the appellant and the learned Public Prosecutor.

14. It has been contended by the learned Counsel for the appellant Ms. Vasudha Nagaraj that the prosecution has failed to explain the reasons for the delay of 24 hours in lodging the First Information Report and also there was a delay of 13 days in arresting the accused and the recoveries were also made after 13 days.

The learned Counsel further contended that P.W. 4 has deposed that the accused strangled the deceased with a rope, but recovered plastic wire and the pieces of wire can be recovered at any time as they are freely available and there is a difference in the material objects when compared with the evidence of P.W. 4. Therefore, the recovery, goes against the case of the prosecution, moreso, when there was no corroboration to the extra-judicial confession said to have been made by the accused, particularly when P.W. 5 has deposed that he did not enquire the accused about the cause of the death. As such, there is no corroborative evidence available with regard to the extra-judicial confession of P.W. 4. In support of the said contention, the learned Counsel for the appellant has also relied on the judgment of the Supreme Court reported in *Kojja Sreenu v. State of A. P.* AIR 2004 SC 1101.

15. The learned Counsel for the appellant also relied on the decision of the Supreme Court reported in *Thulia Kali Vs. The State of Tamil Nadu*, contending that the delay in lodging of the First Information Report should be satisfactorily explained.

16. The point that arises for consideration is whether the prosecution is able to bring home the guilt of the accused beyond all reasonable doubt?

17. The evidence of P.W. 1 is that due to the proposal made by him regarding the marriage of his daughter Madhavi with Mahesh, foster son of his sister Anjamma, which is not to the liking of the accused, she might have killed the deceased. P.W. 2 the brother of P.W. 1 supported the evidence of P.W. 1. The evidence of P.W. 3 that the accused told her that she killed her daughter. P.W. 4 deposed that the accused told him that she killed her daughter by strangulating her with a rope. P.W. 5 deposed that she did not enquire the accused about the cause of the death of the deceased. It is the evidence of P.W. 6 that on enquiry the accused did not tell anything and in the cross-examination he deposed that the accused told him that he strangled the deceased with a rope. Both P.Ws. 5 and 6 are treated hostile and the only evidence that is available is P.W. 4, who speaks of the extra-judicial confession. The evidence of P.W. 1 also did not corroborate with the evidence of P.W. 4 for the reason that P.W. 1 did not have the source of information that his wife has killed the daughter i.e. the deceased. His evidence is based only on suspicion and basing on the same, the finding of conviction cannot be sustained, when according to P.W. 1, the accused might have killed the deceased. But, however, there is no corroborative evidence available as such with regard to the extrajudicial confession of P.Ws. 3 and 4.

18. The decision in *Kojja Sreenu's* case AIR 2004 SC 1101 (cited supra) relied upon by the learned Counsel for the appellant is to the effect that the extra-judicial confession made to witnesses, the witnesses is bound to explain why the accused had made a confession to him/her and the evidence of such witness is doubtful because of non-informing the same to the police of the confession, even after the same was told to that witness. In this case also, according to the prosecution, the accused has informed the P.W. 4 about the committing of the

offence and there is no record available that the P.W. 4 or P.W. 5 or P.W. 6 have made any attempts to inform the police and as contended by the learned Counsel for the appellant, a reasonable prudent conduct exhibited on the part of the persons to inform at least to the village Sarpanch of committing of the offence is not forthcoming in this case. But, none of the witnesses either P.W. 3 or P.W. 4 or P.W. 5 or P.W. 6 have chosen to inform about the said confession either to the Sarpanch of the village or the police. This conduct on their part shows any amount of doubt.

19. The decision in Kojya Sreenu's case (cited supra) is squarely applicable to the case on hand. In the absence of any corroborative evidence available, the evidence of P.W. 4 that the accused has confessed before him that she killed her daughter cannot be accepted. The evidence of P.W. 1 is based on suspicion that the accused told him that if her daughter is given in marriage to Mahesh, she will kill her daughter rather than to agree for the marriage. The recovery of plastic wire after 15 days goes to show that the evidence of P.W. 4 has no credibility and the conviction based on the solitary testimony of P.W. 4 to whom the accused is supposed to have confessed cannot be justified.

20. First Information Report in the criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and the Apex Court has held in the delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated, account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the First Information Report should be satisfactorily explained.

21. In this case also the evidence available on record goes to show that there is a delay of 20 hours after occurrence of the incident. Even though, the Police Station is at a distance of 3 Kms. from the scene of offence no explanation is forthcoming for the delay in lodging the complaint even after 20 hours, Neither the villagers nor prosecuting witnesses to whom the accused has confessed that she has killed the deceased had made any reasonable attempt to inform the same to the police. As regards the arrest of the accused, he was arrested nearly after 13 days, that itself goes to show that the prosecution has utterly failed to explain the delay moreso when there is no evidence that the accused was beaten by the victim and was admitted in the hospital and treated in the hospital for 13 days. On perusal of examination of the accused u/s 313 Criminal Procedure Code goes to show that the accused was specific in her statement that her husband has killed the daughter, but she has been implicated in the case, but the incriminating evidence was not put to the accused. There was no cross-examination on the particular point in the 313 Criminal Procedure Code statement. In the absence of any satisfactory explanation is forthcoming from P.W. 1, the fact that he proceeded to Bhongir at 12"0 clock and returned back at

11 p.m. is not a reason for not lodging the complaint to the Police Station which is 3 KMs. away from the scene of offence. In the absence of any explanation forthcoming as to why the First Information Report has been lodged after more than 20 hours, and in view of the decision of the Supreme Court in Thulia Kali's case 1972 Cri LJ 1296 (cited supra), we are of the view that it is unsafe to base conviction upon the evidence let in by the prosecution.

22. Further, the prosecution has also not explained the reasons for arresting the accused after nearly 13 days. But, however, the learned Public Prosecutor has contended that the delay in arresting the accused is due to beating of the accused by the villagers and she has been admitted in the hospital. But, there is no evidence available on record as such or moreso any documentary evidence or medical evidence that she was beaten and she was admitted in the hospital for the injuries, and thereafter she has been arrested after the discharge from the hospital. In the absence of any evidence available, the reasons explained by the prosecution cannot be said to be a ground to explain the delay in the arrest.

23. In the light of the analysis made above, we are of the opinion that the Court below is not justified in recording the finding of conviction and sentence as there is no direct evidence available as such that the accused herself has committed the murder of her daughter. The prosecution has utterly failed to explain the delay in lodging the First Information Report and the delay in arresting the accused and the delay in making recoveries and there is no corroboration to the evidence of P.Ws. 1 and 4. Virtually there is no explanation forthcoming for the delay of 20 hours in lodging the First Information Report and 13 days for arresting the accused and making recovery of M.O. 1 after 20 days of the incident. Further there is no medical evidence available to show that the accused was beaten by the villagers and admitted in the hospital for the injuries and therefore she had been arrested 13 days after the incident. Under these circumstances, the judgment of the Court below is liable to be set aside.

24. Accordingly, the Criminal Appeal is allowed and the judgment of the learned Prl. Sessions Judge, Nalgonda in S.C. No. 213 of 2003 is set aside and the appellant is directed to be set free if not required in any other case.