
(2011) 01 SC CK 0037

In the Supreme Court Of India

Case No : Criminal Appeal No. 1449 of 2007

M. Nageshwar Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 313
Penal Code, 1860 (IPC) — Section 302, 304B, 306, 498A

Citation : (2011) 1 ACR 818 : (2011) 1 AWC 2.37 Supp : (2011) 1 Crimes 145 :
(2011) 1 JCC 432 : (2011) 1 JCR 233 : (2011) 1 JT 31 : (2011) 1 NCC 601 :
(2011) 4 RCR(Criminal) 225 : (2011) 1 RLW 554 : (2011) 1 SCALE 99 : (2011) 2
SCC 188 : (2011) 1 SCC(Cri) 646 : (201

Hon'ble Judges : R. M. Lodha, J;Aftab Alam, J

Bench : Division Bench

Advocate : Sushil Kumar, S. Udaya Kumar Sagar, Vinita Sasidharan and Aditya Kumar, for Lawyer's Knit and Co, for the Appellant; D. Mahesh Babu, Ramesh Allan Kr. and D. Bharathi Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This appeal by grant of special leave is directed against the judgment and order dated September 13, 2007 passed by the High Court of Andhra Pradesh in Criminal Appeal No. 1009 of 2005. The High Court allowed the government appeal, reversed the judgment of acquittal passed by the trial court, found the Appellant guilty of the charge of killing his wife Laxmi Kumari by giving her cyanide in cold drink and, accordingly, convicted him u/s 302 of the Penal Code and sentenced him to rigorous imprisonment for life and a fine of Rs. 1,000/- and in default of payment of fine, simple imprisonment for 3 months.

2. The basic facts of the case which are admitted or are at any rate undeniable need to be stated in the sequence in which those facts were unfolded. The Appellant and Laxmi Kumari got married on April 30, 2000. After marriage they came to live in a rented house at Yellareddiguda, Hyderabad. The Appellant and his wife lived on the first floor and the remaining portion of the house was

occupied by its owner. The Appellant had a graduate degree in Engineering and a diploma in Computer. He worked as a faculty member in Harica Information, situated at Rehamath Complex, Amarpreet, Hyderabad, and he also gave coaching to students in another computer centre. He was earning a salary of about Rs. 20,000/- per month.

3. On September 2, 2000 in the afternoon the landlady, Saroja (PW7) received a telephone call asking for Laxmi Kumari. She went to the portion of the house where she lived and found her there lying on a chair. Then, with the help of her maid servant (PW3), she got her shifted to Mythri Hospital. After some time her husband, the Appellant also reached there.

4. In the morning of September 3, 2000 Laxmi Kumari's father, PW1 received a phone call from the brother of the Appellant, Seshagiri Rao intimating him that his daughter had fallen seriously ill and had been admitted to the hospital. He along with his wife proceeded to Hyderabad and on reaching there went to the hospital, where they found their daughter in an unconscious state. On the same day at 8.30 p.m. Laxmi Kumari was declared dead by the doctors of Mythri Hospital. In the death certificate issued by the Hospital (exhibit P-3) it was stated that she was admitted to the hospital on September 2, 2000 at about 7.15 p.m. At the time of admission she was unconscious and there was no pulse or blood pressure. She was diagnosed to have suffered a cardio-pulmonary arrest. She was put on Ventilator and given certain medicines that restored her cardiac activity. She suffered further cardiac arrest at 8.10 p.m. on September 3, that led to her death at 8.30 p.m.

5. After Laxmi Kumari was dead, her father PW1 went to S.R. Nagar Police Station and lodged a complaint there at 9.15 p.m. In the complaint, he simply stated that in the morning on that day he received a telephone call from Seshagiri Rao from Hyderabad asking them to immediately come down to Hyderabad as their daughter was in danger. They started at 8 a.m., and on reaching Hyderabad went to Mythri Hospital where their daughter was in an unconscious state. After half an hour the doctors declared that their daughter had died. He further said that to his knowledge their daughter was not suffering from any ailment; he knew that she was in good health till 4 p.m. on September 2, 2000, and after completing her household work she became unconscious at 6 p.m. He did not know how this happened. He requested for necessary action so that her dead body could be handed over to him for the last rites. The complaint (exhibit P-1) was registered as Crime No. 589/2000 u/s 174 of the Code of Criminal Procedure (Cr. P.C.), and was formally incorporated in an FIR (exhibit P-14).

6. After recording the statement of the father of the deceased the Sub-Inspector (PW15) proceeded for Mythri Hospital and got the body of the deceased shifted to Gandhi Hospital for post mortem examination. At 11 p.m. on the same day, the Sub-Inspector went to the residence of the Appellant and the deceased and in the presence of two 'panchas' made a thorough search of the three rooms

which were in the occupation of the Appellant and the deceased. He prepared the 'Scene of Offence Observation Panchnama' (exhibit P-5) and the 'Rough Sketch of the Scene of Offence' (exhibit P-6). From exhibit P-5, the 'Scene Panchnama,' it appears that the door on the eastern side of the bedroom was kept closed for separating it from the portion of the house under the use and occupation of its owners. A computer system was set up against this door. On the 'Sajjas' of the bedroom the Sub-Inspector found suit cases and some miscellaneous articles and on the shelves, goddess' pictures, weekly magazines, some books and clothes. There was also one double bed in the bedroom. No article or anything else that would shed light on the cause of death of Laxmi Kumari was found in the search.

7. Next morning (September 4, 2000) inquest was held on the body of Laxmi Kumari in course of which, her parents expressed suspicion on her husband (the present Appellant) and his brother Seshagiri Rao in connection with her death. As a consequence, the case which was initially instituted u/s 174 Code of Procedure Code was changed to one under Sections 498A and 306 of the Penal Code and further investigation began in that light.

8. On the same day at 4.05 p.m., post mortem was held on the body of the deceased Laxmi Kumari. According to the post mortem report, cyanosis was present in the fingers and nails and there was froth in the mouth and nostrils of the deceased. In the stomach there was 200 ml of yellowish liquid that smelled of bitter almonds. The mucosa of the stomach, small intestine and large intestine was congested; similarly congested were the organs liver, gall-bladder and biliary passages, pancreas, kidney and uterus. The doctor conducting post mortem took samples of small intestine, large intestine, liver and kidney and also collected a little of the liquid found in the stomach for forensic examination. The doctor reserved his opinion as to the cause of death awaiting report from the forensic experts.

9. According to the Appellant, he was taken in custody by the police on September 4, 2000 itself, though was shown as formally arrested three days later, on September 7, 2000. But we may, for the present, discard the allegation made by the Appellant and proceed with the incontrovertible facts of the case.

10. On September 7, 2000 one B.N. Chary (PW10) who knew the families of both the deceased and the Appellant and who was one of the two mediators in the marriage between the Appellant and Laxmi Kumari, along with 20 others, came from Velerupadu to Hyderabad, to meet their MLA, Tati Venkateswarlu. They took the MLA to the police station on September 7, 2000 between 8 and 9 in the morning where he had a discussion with the Inspector in connection with the case. At that time, the Appellant and his brother were also present at the Police Station.

11. On the same day and at about the same time (September 7, 2000 at 7.40 a.m.) the Appellant is said to have made a detailed confessional statement that was recorded by Ashok Kumar Singh (PW18), Inspector of Police of S.R. Nagar

Police Station, near AP Transco bill-payment office, Ameerpet in the presence of two panchas, namely, S. Chengaiah Chetty and G. Venkateswara Reddy (PW12).

12. In his confessional statement, the Appellant is supposed to have said that his marriage with the deceased Laxmi Kumari was arranged by his parents and it was solemnized on April 30, 1999 at Annavaram Temple, East Godvari District. His in-laws had initially agreed to pay as dowry a sum of Rs.5,00,000/-, besides some furniture and a motor cycle, but they gave only Rs. 3,69,000/- and some furniture that was worth no more than Rs. 10,000/-. In May, 1999 he moved with his wife to Hyderabad where he took on rent the first floor of house No. 8-3-412 at Yellareddiguda owned by Sri Sudharshan, on a monthly rental of Rs. 1,200/-. He made plans to go to the U.S.A. for better job prospects, and while continuing to work in the coaching centre he also obtained a passport in his name. But after a few months of marriage frictions arose between him and his wife. She did not co-operate with him at the time of sex, and used to pick up quarrels with him on several issues. She would complain about the stay of his brother with them and would strongly oppose his sending any money to his parents. She did not seem to care much for him or his work and despite persuasions by him showed no interest in learning computer. Distressed by the unhappiness of his matrimonial life, he thought of taking his own life and with that intention procured from his friend Brahmachary, who was a goldsmith, some cyanide on the pretext that he needed it for cleaning the computer parts. He kept the cyanide at a concealed place at their residence in Hyderabad. At that time he got an opportunity to go to the U.S.A. through the Macro Technology Company, and he told his wife that he would go first and then call her there after a year, but she insisted on accompanying him. He even told her that he would call her to America only after three months of his going there, but she would not listen and insisted that he must take her along with him. Completely exasperated by his wife's nagging he thought of killing her rather than giving up his own life. He then decided to kill her by administering the poison that lay hidden at their residence and waited for a suitable chance to give her the poison. On August 22, 2000 his wife went to her native place to attend the marriage of her elder brother and she returned back to Hyderabad on September 1, 2000. During her absence from the house he had decided to kill her within the shortest possible time as he had to go to the U.S.A. in the month of October, 2000. In the night of September 1, 2000 his brother-in-law, Prasad stayed in his house. That night he was completely unable to sleep and he kept on thinking of ways to kill his wife by giving her cyanide. On the following day at about 2.30 in the afternoon he returned from the computer centre. His brother-in-law had already left the house in the morning. At around 4 in the afternoon his wife said she wanted to have a cold drink. And this suddenly gave him the idea to give her the poison by mixing it in the cold drink. He took out the cyanide packet from the place where it was hidden and went to a nearby general store from where he purchased a bottle of Limca. He got the bottle opened and on the way back went inside a STD booth where he put some cyanide into the opened cold drink bottle. At around 4.30 p.m. he arrived back at

his house and gave the cold drink, spiked with cyanide, to his wife. His wife asked him to have some cold drink from that bottle but he declined the offer and left the house saying that he had some urgent work at the computer centre. On the way to the institute, he threw away the remaining cyanide in a nala. He was sure that his wife would consume the poisoned cold drink and would die. At about 6.45 p.m. he received the message at his office that his wife was seriously ill and was admitted to Mythri Hospital. He knew that his wife would die. He went to the hospital and found his wife in unconscious state. He feigned ignorance about the reason for her falling ill. He rushed back to his house and found the Limca bottle by the side of the sofa. It still contained about half of its contents. He threw away the remaining contents of the bottle in the bathroom and concealed the bottle on the bedroom shelf. Then, he again went to the hospital. In the meanwhile some of his relatives had sent the message to his in-laws. On September 3, his in-laws reached the hospital. On the same day (September 3, 2000) around 8 p.m. the doctors declared his wife dead. On the death of his wife, his in-laws got agitated. They expressed doubt about the cause of her death and cast suspicion on him. Seeing the turn of the events he went away from the hospital. On the following morning, he came to know that the police was searching for him. He decided to escape from Hyderabad and go to his village. He was waiting near the Electricity Office, Ameerpet to meet the M.D. of his computer institute to take some money from him but in the meanwhile he was apprehended by the police at about 7.30 in the morning. At the conclusion of his confessional statement the Appellant offered to take the police and the panchas to his house where the empty Limca bottle was hidden and to show the point at the culvert where he had thrown the remaining portion of the cyanide. The confessional statement was read over and explained in vernacular language and all accepted it to be true and correct.

13. In furtherance of the confessional statement, the Appellant took the investigating officer along with the two panchas, S. Chengaiah Chetty and G. Venkateswara Reddy (who had witnessed the recording of his confessional statement) to his residence at Yellareddiguda where this time, at the instance of the accused, the police officer was able to find and recover one empty Limca bottle-300 m.l., lying on a shelf. The Limca bottle was seized in the presence of two 'panchas,' under Seizure Report (exhibit P-10 & exhibit P-18) which was prepared on September 7, 2000 at 10.30 a.m. The Seizure Report is shown to have been signed by both S. Chengaiah Chetty and G. Venkateswara Reddy (PW12) as witnesses.

14. On the basis of the confessional statement and the recovery of the cold drink bottle made in pursuance to it, the case was further altered to be one u/s 302 of the Penal Code.

15. On September 29, 2000 the investigating officer, Sub-inspector G. Prasada Rao (PW16) went to Bhradrachalam and recorded the statement of Brahmachary (PW4), the goldsmith from whom the Appellant is said to have obtained cyanide.

In the statement recorded u/s 161 of Code of Criminal Procedure (later produced before the court as exhibit P-2), Brahmachary confirmed that the Appellant had obtained cyanide from him.

16. Later, on December 16, 2000 two reports were received from the Forensic Science Laboratory, Andhra Pradesh. The first report was in respect of the samples/specimens preserved by the doctor holding post mortem on the body of the deceased. The forensic report stated that the samples in the three screw capped bottles were received in the laboratory on September 15, 2000 (samples were collected in course of post mortem held on September 4, 2000 and there is no explanation where the samples lay for 11 days). The three bottles contained specimens of (i) Stomach and piece of intestine, (ii) Pieces of liver and kidney and (iii) Reddish turbid liquid (collected from the stomach of the deceased). According to the report, cyanide, a chemical poison was found in all of them.

17. The second report of the same date was in respect of the Limca bottle, allegedly recovered from one of the rooms of the Appellant's residence. This was received in the laboratory on September 27, 2000 (the recovery of the bottle was made on September 7, and it is not explained why it reached the laboratory after 20 days). In the forensic report it is noted that the bottle labeled as 'Limca' contained "small amount of white powder." According to the report, on analysis it was found to be cyanide, a chemical poison.

18. On the basis of the forensic reports, the doctor who earlier held the post mortem gave the final opinion on the cause of death and stated that it was due to cyanide poisoning.

19. This finally tied up the investigation and the police submitted charge sheet on January 31, 2000 and the Appellant was finally sent for trial for committing the murder of his wife.

20. It is significant to note here that the Appellant was charged only u/s 302 of the Penal Code. He was not charged under Sections 304B or 498A of the Penal Code or under the provisions of the Dowry Prohibition Act, 1961.

21. Before the trial Court, the prosecution examined as many as 18 witnesses and produced 20 documents that were marked as exhibits. The Appellant in the statement u/s 313 Code of Criminal Procedure, of course denied all the allegations against him. He denied having made any confessional statement. He also denied that he led the investigating officer and the 'panchas' to his residence and there produced before them an empty Limca bottle from a 'sajja' in the bedroom. At the end of the statement he said that sometime after marriage his wife had become unwell and he had got her treated. She had gone to attend the marriage of his brother, PW2. After returning from the marriage of her brother, she was in a disappointing (sic depressed) mood. At the end of examination by the court he made further statement which was recorded as follows:

It is submitted that after the death of my wife on 3-9-2000 the body was shifted to Mortuary at Gandhi Hospital from Mythri Hospital, myself, my father-in-law (Bapaiah), my brother-in-law and my brothers were together and slept in my house at Yellareddyguda. Next Day i.e. 4-9-2000 we all went to Mortuary where the police Sanjeeva Reddy Nagar was also present. After the post-mortem the police and my father-in-law took me and my brother to police station of Sanjeevareddynagar and where we were kept illegally and forced us to give money to my father-in-law. I pleaded my innocence, but neither the police nor my father-in-law listened me (sic). Subsequently relatives of my father-in-law and MLA visited the police station had the discussions with the police officials and put up a false case against me.

22. The trial Court on a consideration of all the evidence produced before it found that the prosecution had failed to prove the guilt of the accused beyond all reasonable doubts. It, therefore, acquitted him of the charge u/s 302 of the Penal Code. Against the judgment of the trial Court, the state government preferred an appeal (Criminal Appeal No. 1009 of 2005). The High Court, by a long and detailed judgment set aside the judgment of the trial Court and convicted and sentenced the Appellant as stated above.

23. We will now proceed to examine whether on the basis of the materials on record, the view taken by the trial Court, was so wrong and unreasonable as to warrant interference and reversal by the High Court.

24. The medical evidence by PW14, including the post mortem report (exhibit P-12) and the final opinion on the cause of death (exhibit P-13) coupled with the evidence of PW17, Joint Director F.S.L., Hyderabad and the report dated December 16, 2000 (exhibit P-15) leave no room for doubt that Laxmi Kumari died of cyanide poisoning. But the question is whether there is sufficient reliable evidence to show that the cyanide was given to her in the cold drink by the Appellant.

25. Before proceeding to examine the evidence adduced by the prosecution in support of its case, it would be better to put aside the so called confessional statement made by the Appellant. It is seen above that the confessional statement was completely repudiated by the Appellant before the trial court. Further, the statement was supposedly made in presence of 'panchas,' namely, Sri. S. Chengaiah Chetty and Sri. G. Venkateswar Reddy and it was shown to have been signed by them as witnesses along with Inspector Ashok Kumar Singh, the investigating officer (PW18). Of the two panchas, only Venkateswar Reddy was examined as PW12, but he did not support the prosecution case either in regard to the Appellant's confessional statement or the Seizure Report of the Limca bottle and was declared hostile. It was only PW18, the investigating officer, who stated before the trial court that the accused voluntarily made the confessional statement and voluntarily produced the empty Limca bottle from the 'sajja' at his residence. The confessional statement, disowned by the Appellant and not supported even by the witness, is of no use for judging the Appellant's

guilt and must be kept out of consideration.

26. Now, coming back to the evidence led by the prosecution; as noted above, apart from the doctor (PW14) and the forensic expert (PW17), 16 more witnesses were examined to prove the culpability of the Appellant. Out of them PWs 1 and 2 were the father and the brother respectively of the deceased, Laxmi Kumari. Having regard to the charge on which the Appellant was tried, and the nature of the prosecution case the relevance of their evidences is limited to the question, whether or not the Appellant can be said to have the motive to commit the crime. But before that, the prosecution is required to establish other circumstances which are more important and directly relevant to the case.

27. PW7 was the landlady in whose house the Appellant and the deceased lived on rent, and PW3 was her maid. These two witnesses stated before the Court how they had found Laxmi Kumari lying unconscious in a chair and had shifted her to Mythri Hospital for treatment. PW3 further stated that at that time the accused was not present in the house but he came to the hospital an hour after the deceased was admitted there. In her cross-examination by the defence, she stated that the deceased was suffering from some kind of disease, and at that stage she was declared hostile by the prosecution. PW7 similarly stated that on receiving a telephone call she went to the portion of the house occupied by the deceased and found her there lying unconscious in a chair. She, then, called her maid PW3 and with her help, shifted her to Mythri hospital. She did not know what had happened to the deceased. In her cross examination she stated that the accused and the deceased were living amicably prior to the date of the incident.

28. PW4 was Brahmachary, the goldsmith residing at Bhadrachalam, from whom the Appellant is supposed to have obtained the cyanide as per his confessional statement. In his deposition before the Court, PW4 stated that he was threatened and cajoled by the police to say that the Appellant had obtained cyanide from him on the pretext of cleaning the computer parts. He stated before the court that in the last week of September 2000, S.R. Nagar Police came to his house at Bhadrachalam and from there brought him and his brother to S.R. Nagar Police Station in Hyderabad. There they were kept for 10 days and were threatened that they would be implicated in the case, unless they made statements as directed by the police. In the end, finding no way out, he yielded and made the statement before the police and the magistrate as he was asked to do. He was declared hostile and was cross-examined by the prosecution, in course of which he bluntly denied that his statement u/s 161 of Code of Criminal Procedure was given voluntarily and not under coercion. The deposition of PW4 is a major blow to the prosecution case as regards the source of cyanide to the Appellant and his access to the poison.

29. Next comes, the issue of the Appellant mixing up cyanide in the cold drink bottle of Limca and giving it to the deceased to drink. On this issue, the prosecution relies upon the evidence of PW6, the owner of the general store and

the recovery of the empty Limca bottle from one of the rooms in the occupation of the Appellant and the deceased. PW6 deposed before the court that more than a year ago, at about 2.30 or 3 p.m., the accused went to his store and purchased a Limca bottle. Apart from the price of the cold drink, he was asked to deposit Rs. 5 for the bottle. He paid Rs. 15 and took away the bottle of Limca, but he didn't return the empty bottle. He did not know where and in which house the accused resided. In cross-examination, he stated that his store was a big shop and a number of customers came there. He remembered some customers and the articles purchased by them but didn't remember most of the customers or the articles purchased by them on a particular day. He also said that most of the time he went out for the purchase of supply for the shop and at those times his brother sat in the shop. He also said that he was a social worker and a reputed person in the locality. And he went to the police station whenever some disputes arose in the locality and tried to settle them amicably by compromise.

30. In appreciating the evidence of PW6, two or three things need to be kept in mind. First, though it is not impossible for a busy shop keeper to recall a person who is not a regular customer of the shop but comes there by chance for purchasing a bottle of cold drink, it is certainly a little unusual. Secondly, PW6 claimed himself to be a social worker and a reputed person in the locality. He was quite familiar with the police and used to visit the police station for settlement of the disputes arising in the locality. Thirdly, and most importantly, the Appellant was presented before him after allegedly making the confessional statement before the police and the punch witnesses. The whole story was, thus, out in the open and the police had brought the culprit before him 'for a simple confirmation' that he would indeed do in order to oblige the police without any difficulty. For the reasons discussed above, we feel very reluctant in accepting the testimony of PW6.

31. Next comes, the recovery of the empty Limca bottle from one of the rooms at the Appellant's residence that was found by the forensic laboratory to contain cyanide. Proceeding step by step, it may be noted that the Appellant's residence was thoroughly searched soon after the death of Laxmi Kumari on September 3 itself. The 'Scene of Offence Panchnama' is in considerable detail and it describes the Appellant's residence and the articles found there. On the 'sajja' of the Appellant's bedroom, suit cases and some miscellaneous articles were found and on shelves there were portraits of goddesses, weekly magazines, other books and some clothes. It is rather strange, that in course of such a detailed examination, the Sub-Inspector should have missed out the empty Limca bottle that is shown to be recovered three days later from the same shelf. The seizure memo does not state that the bottle was taken out by the Appellant from some hidden place from where normally it could not be recovered without his assistance. The seizure memo (exhibit P-10 and exhibit P-18) was prepared in presence of panchas, Sri. S. Chengaiah Chetty and Sri. Venkateswar Reddy. Only one of them, namely, Sri. Venkateshwar Reddy was examined by the prosecution as PW12. He denied that any recovery was made in his presence. On the

contrary he stated that on September 7, 2000 S.R. Nagar police obtained his signatures on some papers of which some were written and some were blank. He denied that in his presence the Appellant had led the police to his house and had produced the Limca bottle, that the police had seized it under the seizure memo, and that he and another panch attested the panchnama. Thirdly, it is to be noted that in the seizure report under the column details of seizure what is stated is 'One empty Limca Bottle-300ml.' Thus, at the time of seizure there was no white powder visible inside the bottle as is mentioned in the report of the Forensic Science Laboratory dated December 16, 2000. At this stage, it also needs to be recalled that the bottle reached the Forensic Science Laboratory only on September 27, 2000 and there is absolutely no evidence as to where and with whom the bottle remained during this period. All these circumstances make the prosecution case on recovery of the Limca bottle from the residence of the Appellant highly suspect.

32. Thus analysed, there appears to be hardly anything in the prosecution evidence to establish the charge against the Appellant. The facts and circumstances of the case may give rise to a strong suspicion against the Appellant but it has been said many times before that suspicion howsoever strong can not take place of proof. There is no proof of the Appellant's guilt and on the basis of the evidence on record it would be quite unsafe to hold him guilty of murder and to send him to imprisonment for life.

33. We think that the trial court had taken the perfectly correct view in the matter. The High Court was, unfortunately, unable to keep aside the so called confessional statement. On the contrary, it put the confessional statement at the centre and proceeded to examine all other evidences in its back drop and, thus, reached to a completely erroneous conclusion regarding the Appellant's guilt. We find the judgment of the High Court unsustainable. The impugned judgment of the High Court is, accordingly, set aside and the judgment passed by the trial court is restored. The Appellant is acquitted of the charge and is directed to be released from jail forthwith unless he is required in connection with any other criminal case. The appeal is allowed.