
(2014) 04 AP CK 0064

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 447 of 2010

Mareppagari Kuppaiah

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 1 ALT(Cri) 157 : (2014) CriLJ 4785

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

Bench : Division Bench

Advocate : K. Ramamohan Mahadeva, Advocate for the Appellant

Judgement

M.S.K. Jaiswal, J.—The Appellant was tried in S.C. No. 46 of 2008 on the file of the District and Sessions Judge, Chittoor for the offence punishable under Sec. 302 I.P.C. for having caused the death of C. Mangamma (for short "the deceased") in her house at Kadathatlapalli S.C. Colony, Baireddipalle Mandal on the intervening night of 21/22.03.2007 by strangulating her. Through its Judgment Dt. 25.01.2010, the trial Court found the accused guilty and sentenced him to undergo imprisonment for life and to pay fine of Rs. 500/-, in default to under go simple imprisonment for six months. The case of the prosecution, in brief, is as under:

After the death of her husband, the deceased started living at Kadathatlapalli village. The accused developed illicit intimacy with her and continued it for about five years, prior to the incident. On 21.12.2007, the deceased was sleeping in her house along with her maternal aunt Venkatamma-P.W. 3. The accused, who was frequently visiting the deceased, came there, and on seeing him, P.W. 3 came out of the room and slept in the veranda. At about 11.00 p.m., in the night the accused killed the deceased and went out of the room.

T. Muni Ratnam is the cousin brother of the deceased and he is a resident of the same village. He filed the complaint with Baireddipalli Police Station at 5.00 p.m.

on 22.12.2007 stating that on the same day morning at about 9.30 a.m. his villagers Manohar and Babu (not examined as witnesses) came and informed him that the deceased was found lying dead in her house. He further stated that since the deceased was having illicit intimacy with the accused and also one Krishnappa, they might have killed his sister.

2. Crime No. 79 of 2008 was registered and the investigation was taken up by the Inspector of Police-P.W. 9. Scene of offence was visited, inquest was conducted, dead body was sent for postmortem examination and the statements of witnesses were recorded. The Medical Officer-P.W. 8 opined that the cause of death of the deceased was due to asphyxia, caused by strangulation. After completing the investigation, charge-sheet was filed.

3. Cognizance was taken and the case was registered as S.C. No. 46 of 2008 by the District & Sessions Judge, Chittoor. Charge under Sections 302 IPC was framed against the accused, and on his pleading not guilty, the trial was taken up. On behalf of the prosecution P.Ws. 1 to 9 were examined, Exs. P.1 to P.7 were filed, and M.Os. 1 to 7 were taken on record. The accused denied the evidence on record and contended that he was falsely implicated. In his defence, Exs. D1 to D.7 were filed.

4. Sri K. Rammohan Mahadeva, learned counsel for the accused submits that there is no conclusive evidence on record to prove that the accused was last seen in the company of the deceased. He further submits that as per Ex. P.1 - complaint, which was lodged with considerable delay, suspicion is expressed against the accused as well as one Krishnappa with whom the deceased was having illicit intimacy. He submits that the investigation was not conducted properly and the accused has been falsely implicated. He submits that when the incident is said to have taken place at about 11.00 p.m. in the night of 21.12.2007, P.W. 1 was informed about the death of the deceased on 22.12.2007 at about 9.00 or 9.30 a.m. by Manohar and Babu, who have not been examined, and even after the information was given to P.W. 1, he filed the complaint at about 5.00 p.m. He further submits that in Ex. P.1 there is no reference whatsoever, to any of the villagers informing him that they have seen the accused and the deceased together for the last time on the night of 21.12.2007. He contended that the Investigating Agency has planted the relations of the deceased to get false evidence to the effect that they have seen the accused and the deceased together on the night of the incident. The learned counsel further submits that the case of the prosecution that the accused confessed having committed the crime and lead to recovery of incriminating material objects cannot be believed, and that the trial Court has not correctly appreciated the evidence on record and erroneously found the accused guilty.

5. On the other hand, the learned Additional Public Prosecutor submits that the evidence on record establishes that the deceased has developed illicit intimacy firstly with the accused and thereafter with one Krishnappa, and this gave rise to the disputes between the accused and the deceased. She further submits that

there is consistent evidence that the accused went inside the house of the deceased on the night of the incident when she was alone, and on the next day morning she was found lying dead. She further submits that based on the circumstantial evidence, such as strong motive, the fact that the accused and the deceased were last seen together, and the recovery of the torn shirt of the accused, the piece of which was found in the hands of the deceased, leaves no room for any doubt that it is the accused, who committed the crime.

6. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt, so as to sustain the conviction and sentence or whether it needs to be modified, varied or set aside.

7. POINT: The deceased was a woman, aged about 40 years, who lost her husband about fifteen years back. She came down to Kadathatlapalli village and was staying as tenant in the house of P.W. 2. She was eking out her livelihood by doing labour work. The accused, who was also resident of the same village and aged about 53 years, is said to have developed illicit intimacy with the deceased, and was frequently visiting the house of the deceased. The relations and the neighbours of the deceased were said to be aware of the said affair. The deceased is also stated to have developed illicit intimacy with one Krishnappa and he too frequently visiting the house of the deceased.

8. The deceased was found lying dead in her house in the morning of 22.12.2007. There were ligature marks on her neck, which indicate that her death was due to asphyxia caused by strangulation. This fact was proved by the evidence of the Doctor-P.W. 8 and also post-mortem report, Ex. P.5.

9. While the above facts are either proved or not disputed, the contentious aspect is whether it is the accused, who caused the death of the deceased by strangulation. The accused denied the said allegation.

10. Ex. P.1 is the earliest complaint about the incident, given by P.W. 1, who is none other than the cousin brother of the deceased and also resident of the same village. His source of information that the deceased found lying dead in her house is said to be by two persons, by name Manohar and Babu. None of these two persons, though listed as witnesses, were examined and were given up by the Public Prosecutor. Therefore, the nature of information said to have been given by these two material witnesses to P.W. 1, has not been made available to the Court.

11. In Ex. P.1, P.W. 1 suspected the involvement of one Krishnappa and the accused, both of whom were having illicit intimacy with the deceased. The Investigating Agency does not appear to have proceeded against the other named person i.e., Krishnappa for the reasons best known to it.

12. It is also noticed from Ex. P.1 that neither any of the relations nor the neighbours of the deceased informed him that they have seen the accused entering into the house of the deceased on the night of 21.12.2007. If really the

neighbours and the relations have seen the accused and the deceased together and since P.W. 1 is also the cousin brother of the deceased, they would have informed him about the said fact and in that event there would not have been any necessity for P.W. 1 to take the names of the accused and Krishnappa, as suspects. Obviously because, none of the people informed P.W. 1 that the accused was in the company of the deceased in the night of her death, he did not mention the same. The information reached P.W. 1 at about 9.30 in the morning. For more than seven hours, the complaint was not filed. Even during this period of seven hours, when he was near the deceased, it appears that P.W. 1 was not inform about the fact of the deceased and the accused being seen together. The contents of Ex. P.1 disprove the claim of the prosecution and its witnesses that they have seen the accused and the deceased together.

13. Coming to the oral evidence on record, it may be noted that the material witnesses are P.Ws. 3, 4 and 5. P.W. 1 is the complainant and P.W. 2 is the owner of the house, where the deceased was living as a tenant and where she was found lying dead. They speak about the facts, which are not in controversy.

14. The important among the three is P.W. 3, who is the maternal aunt of the deceased, aged about 65 years. She claims to have a hut near the house of the deceased, and said that she used to go to the house of the deceased for the sake of sleeping, during nights. She claimed knowledge about the acquaintance of the deceased with the accused as well as Krishnappa, and stated that both of them were frequently visiting the house of the deceased. She deposed that, as usual, on the night of the incident, she went to the house of the deceased and both of them were sleeping inside, and at about 10.00 p.m. in the night, the accused knocked the door and when the deceased opened the door, the accused went inside the house and she came out of the room, and slept in the veranda. She has also stated that she heard some Galata inside the house and though she knocked the door, it was not opened, but at about 11.00 p.m., the accused came to her and informed her that he killed the deceased and threatened her to kill her also, if she informs the incident to anybody. P.W. 3 further deposed that thereafter she went back to her house and slept, and did not inform about the incident to anybody out of fear. It was only after the police came to the village, which, according to the Investigating Officer, was in the late night of 22.12.2007, which means for 24 hours i.e., one day after the incident, that P.W. 3 revealed the information.

15. A perusal of the testimony of P.W. 3 gives no room for doubt that it is neither inspiring nor sounds probable, so as to be in accord with the natural human conduct. It may be recalled that even in Ex. P.1, which was lodged at 5.00 p.m., on 22.12.2007, there is no reference whatsoever to P.W. 3. P.W. 3 was an old aged woman and right from morning after the incident, all her relations, including P.W. 1, were near the dead body of the deceased. It is impossible to believe that even though she was in the company of her close relations and was near the dead body, she did not inform anybody as to what she is said to have

seen and what she was told by the accused. It is highly improbable that only after the police arrived at the scene of offence, she informed them as to what happened in the night of 21.12.2007. No doubt, the threat of physical harm has some impact on the conduct of a person, but with the passage of time, the threat perception gets diluted, particularly, when the threatened person comes in contact with her close relations. Considering her age, P.W. 3 would not have kept to herself, the most crucial information for about 24 hours. It is not as though that the accused was seen anywhere around during this period. The evidence of P.W. 3 is such that we have no option to hold that she is not a reliable and truthful witness.

16. Then there is evidence of P.Ws. 4 and 5, who also claims to have seen the accused and the deceased together, for the last time when the deceased was alive. P.W. 4 is the Talari of Kadathatlapalli village. He is also the cousin brother of the deceased. He stated that on 21.12.2007 at about 9.00 p.m., he saw the accused near the house of the deceased and on the next day morning at about 9.00 a.m. he came to know about the death of the deceased through Manohar, who, as already stated, has not been examined. He further deposed that there is suspicion against the accused, since he was frequently quarrelling with the deceased over the issue of the deceased moving around with one Krishnappa. The evidence of this witness also cannot be taken as basis to prove that the deceased was last seen in the company of the accused.

17. According to P.W. 4 he has seen the accused around the house of the deceased at about 9.00 p.m., in the night. P.W. 3, however, stated that the accused straight away came to the house at about 10.00 p.m., in the night and knocked the doors. Since the nature of relationship between the accused and the deceased was a known fact, the accused would not have roamed around the house of the deceased for about an hour before knocking the doors at about 10.00 p.m., as stated by P.W. 3. Further, the evidence of P.W. 4, in a way weakens the case of the prosecution. According to P.W. 4, as a responsible village official, immediately after seeing the dead body of the deceased at 9.00 a.m., he telephonically informed the police, and the Asst. Sub-Inspector of Police and other Constables came to the spot at about 10.30 a.m. He further deposed that the Inspector of Police - P.W. 9 came to the spot at about 4.00 p.m. it may be recalled that the very complaint was lodged by P.W. 1 at about 5.00 p.m., and till that time, according to the Investigating Officer, they have no knowledge about the incident. According to P.W. 4, he saw the police near the scene of offence at about 10.30 a.m., on 22.12.2007 i.e., nearly seven hours prior to Ex. P.1 being lodged and the case being registered. Further, P.W. 4 asserted that it is the Village Revenue Officer, who gave complaint to the police at about 10.30 a.m., on 22.12.2007. This shows that Ex. P.1 is not the earliest complaint to the police. There is another complaint made about the incident, nearly seven hours prior thereto, which has not seen the light of the day.

18. P.W. 5 deposed that on the night of the incident at about 10.00 or 11.00

p.m., he noticed the accused near "Mutyalamma temple" and he has seen him letting "Karpur" at the temple. The testimony of this witness introduces altogether a new story. According to P.W. 3, the accused was in the house of the deceased between 10.00 and 11.00 p.m., on 21.12.2007, whereas P.W. 4 stated that the accused was seen roaming near the house of the deceased at about 9.00 p.m. P.W. 5 furnished a third version viz., that the accused was in the temple of "Mutyalamma" between 10.00 and 11.00 p.m., and was performing "puja". Hence, the irresistible conclusion that can be drawn from the testimony of P.Ws. 3 to 5 is that none of them are truthful witnesses nor did they see the accused and the deceased together in the night of the incident. The contention of the accused that they are planted witnesses gains credibility in view of the nature of their testimony.

19. The next aspect of the matter is about the recovery in pursuance to the confession. The incident took place on 21.12.2007, whereas the accused is said to have been apprehended on 02.01.2008. The accused is said to have made the confession in the presence of Eswar-P.W. 7 and S. Muniratnam-L.W. 7, and, at his instance, his torn shirt was seized. Out of the two independent witnesses, the prosecution examined only P.W. 7. He deposed that nine days after the incident, the police called him and asked him to board their jeep, and he was taken to Venkateswara Swamy temple at Baireddipalli, and by seeing the police jeep, the accused tried to run away. He stated that the accused was apprehended by the police, and at his instance, his shirt-M.O. 7 was seized.

20. Law requires that the vital aspect of self-incriminating confession should lead to recovery of an object, which should establish connection between the crime and the criminal. It is also incumbent on the part of the Investigating Officer to take the local, independent and respectable persons as witnesses at the time when the accused is alleged to have made confession while he is in police custody. Independent and respectable persons of the locality are required to establish the voluntary nature of the confession.

21. In this case, what is noticed is that even though the Police Officer has information that the accused was moving around a temple, which has several shops and people around, he thought it proper to summon P.W. 7 from a distance of 5 KMs. The moment the information is received by the police officer that a suspect of a grave crime is moving in a particular area, no prudent Investigating Officer will waste time, but would proceed to the scene, lest, the suspect may escape from there. As against the above natural way of doing things, in the instant case, the Investigating Officer has summoned P.W. 7 altogether from a different village and waited for his arrival and after P.W. 7 came to the Police Station asked him to board the jeep so as to apprehend the person, suspected for the death of the deceased. Be that as it may, according to P.W. 7, what is seized at the instance of the accused is his torn shirt.

22. The Investigating Agency has not adduced any scientifically tested evidence to show that the shirt, M.O.7, which was said to be seized at the instance of the

accused, was the same shirt, which the accused was wearing at the time of incident and that a torn piece of it, which was found near the scene of offence, is part of M.O.7. This aspect no doubt raises an element of suspicion against the accused, but not conclusive proof, and the benefit of it should go to the accused. In the absence of any clinching evidence on this aspect and without there being any other circumstantial evidence, we find it difficult to hold that the accused committed the murder of the deceased.

23. Upon going through the entire evidence on record, we find that the prosecution could not establish beyond reasonable doubt, that it is the accused, who is the author of the crime. Therefore, the accused is entitled to an acquittal. The point is accordingly answered. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 46 of 2008 on the file of the District and Sessions Judge, Chittoor, dated 25.01.2010, 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.