

(2016) 04 AP CK 0058
In the Andhra Pradesh High Court
Case No : CrI. A.No. 996 of 2010.

**Mekala Muralimohan @ Murali (A-1) and Others - Appellants @HASH
State of A.P., Represented by Public Prosecutor, High Court, Hyderabad**

Date of Decision : 19-04-2016

Acts Referred:

Citation : (2016) 2 AndhLDCriminal 705

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and Sri M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Smt. C. Vasundhara Reddy, Advocate, for the Appellants; Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

Sri C.V. Nagarjuna Reddy, J. - This Criminal Appeal arises out of Judgment dated 28- 7-2010 in S.C.No.211 of 2006 on the file of the learned V Additional Sessions Judge, Kunrool whereby appellant Nos.1 and 2 were convicted for the offence punishable under Section 302 r/w. Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for two months. Appellant Nos.1 and 2 were also convicted for the offence under Section 201 r/w. Section 34 IPC and sentenced to undergo imprisonment for seven years and to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for one month; appellant Nos.4 and 5 were convicted for the offence under Section 302 r/w. Section 109 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for two months. The appellants were also convicted for the offence under Section 120-B r/w. Section 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for two months.

2. The case of the prosecution is that A-1, A-2 and A-5 are the residents of R. Kothur village, Rudravaram Mandal and A-3 and A-4 are the residents of Rudravaram village and Mandal. A-5 is the wife of A-1, A-2 is the younger brother of A-1, A-3 is a close friend of A-1 and A-4 was the wife of Gaddam

Easwaraiah. That A-1 was having illicit intimacy with A-4 since one year prior to the occurrence; that Easwaraiah reprimanded both A-1 and A-4 and asked A-4 to discontinue her contact with A-1 and warned A-1 not to visit his house. A-1 and A-4 did not heed to the words of Easwaraiah and continued their illicit contact. PW-4, PW-5 and LW-7, who were the sons of Easwaraiah, noticed A-4 in the company of A-1. A day prior to Ugadi in the night at 8 p.m., A-1, consuming liquor, came to the house of Easwaraiah, abused him in filthy language and challenged that he will elope A-4 and threatened him. The family members of Easwaraiah pacified both of them and sent A-1 away. That about three or four months prior to the occurrence, A-4 secured acid from LW-16 under the pretext of cleaning bath room in her house and in an attempt to kill Easwaraiah poured the acid in his ear in the night while he was sleeping on a cot, whereupon he woke up and yelled out in pain. Some drops of the acid fell on PW-4 who was sleeping nearby and received injuries to his left upper arm and near left eye. PW-3 and PW-11 warned Easwaraiah to be careful about A-4 as there may be danger to his life. Easwaraiah expressed his inability to control A-4. As her attempts to do away with the life of Easwaraiah proved futile, A-4, with the aid and support of A-1 to A-3 and A-5, hatched a conspiracy to find out the way to avoid him and continue her contact with A-1. A few days prior to the occurrence at about 16.00 Hours, A-1 and A-4 assembled with A-2, A-3 and A-5 in their fields given on lease to one Narahari Venkataramaraju-PW-13 and were talking to one another that if they do not kill Easwaraiah, the latter with the help of his relatives may kill A-1 and they have accordingly determined to kill Easwaraiah soon. PW-13 and PW-14 who overheard the said discussion taken place among the accused, having got afraid, left the place. On 17-7-2005 at 8 A.M. which happened to be Yekadasi festival day, in pursuance of the conspiracy A-4 took her husband (Easwaraiah) from Rudravaram village under the guise of providing treatment at the Government General Hospital, Kurnool and came over to Nandyal in an R.T.C. bus. A-1 and A-5 boarded the same bus and joined A-4 and the deceased at Kondamayapalli village. A-1, A-4 and A-5 and the deceased got down the bus at Nandyal Bus Stand. At about noon, PW-16 saw the deceased in the company of A-1, A-4 and A-5. At about 12.00 Hours, Easwaraiah accompanied by A-4, A-1 and A-5 left Nandyal and reached Kurnool in an R.T.C. bus. At Rajvihar Center, Kurnool, A-2 and A-3 joined A-1, A-4 and A-5 and Easwaraiah and all of them stayed during that night in Sri Balaji Hotel, at Kurnool. On 18-7-2005 at 5.00 Hours, Easwaraiah and A-1 to A-5 took a private jeep at Kurnool and proceeded to Nandikotkur, where all of them stayed in Sri Kirshna Lodge. While A-4 and A-5 remained in the lodge, at 9.00 A.M., A-1 to A-3 took Easwaraiah to Atmakur in an R.T.C. bus. All of them bought tickets upto Velugodu but got down on the way at 10 A.M. in order to implement their evil design of finishing Easwaraiah. A-1 to A-3 took Easwaraiah into deep forest towards East of the road running from Velugodu to Atmakur. Easwaraiah, who was administered powder of sleeping pills mixed in a soft drink on the previous night became drowsy and rested on the way. Then A-2 threw a boulder on Easwaraiah due to which the latter's head broke and blood oozed out from his

ears. A-1 and A-3 beat on his chest and legs with sticks indiscriminately. Easwaraiah died on the spot. A-1 to A-3 removed the clothes of Easwaraiah and burnt them. A-1 took the gold ring and silver lingam kaya of Easwaraiah. Later, A-1 to A-3 covered the dead body of Easwaraiah with leaves and branches of trees in order to screen themselves from legal punishment and caused disappearance of the evidence. Thereafter, the accused proceeded to their destinations. A few days later, A-4 went to Ayyalur village and informed PW-1 about the missing of Easwaraiah. On 14-8-2005, at 21.00 Hours, the S.I. of Police, Rudravaram on receiving complaint from PW- 1 registered the case as Cr.No.53 of 2005 and sent FIRs to all the concerned and took up the investigation. On 4-9- 2005 at 8 A.M., the police arrested A-1 at Narasapuram metta in the presence of Panchayatdars and recorded his confessional statement as to the commission of the offence in association with A-2 to A-5 and recovered one gold ring studded with red stone, which belonged to Easwaraiah, from the possession of A-1. Thereafter, at 11 A.M., at the instance of A-1, the police proceeded to Thirumalaiah Ashram which is situated at a distance of 50 ft. to the south of Ahobilam ? Allagadda main road on the East of Harinagaram village and arrested A-2 and A-3, who disclosed the plan of occurrence and the scene of offence. At 3 P.M., the police seized the boulder, skull bone, bone pieces and a pair of chappals from the scene of offence in the presence of A-1 to A-3 and the panchayatdars. Thereafter, the C.I. of Police, Sirivel ? PW-28, altered the section of law to Sections 302, 201 and 120-B IPC and sent express FIRs to all the concerned officers and took up the further investigation. On 5-9-2005, at 12.30 P.M., PW-28 arrested A-4 and seized Vendi Lingam Kaya and an agreement with reference to the fixation of transformer nearby the field of Easwaraiah and others executed by them on 8-9-2000 wherein Easwaraiah had put his signature along with the other executants and the same was preserved under a cover of panchanama. On 15-8-2005 at 6.00 P.M., PW-28 seized an inland letter alleged to have been written by Easwaraiah on 25-7-2005 to A-4 (in fact written by A-1 to A-4 in the name of Easwaraiah) produced by the latter, in the presence of the panchayatdars. On 6-9- 2005, at 12.00 noon the S.I. of Police seized the admission registers from Sri Balaji Hotel, Kurnool and Sri Krishna Lodge, Nandikotkur, with regard to the accused staying in the said lodges on 17-7-2005 and 18-7-2005 and preserved the same. On 8-9-2005, at 9.00 A.M., the cell phone pledged by A-1 to one Gundala Obulesu of Reddypalli village was seized by PW-23 under a cover of panchanama. After completion of the investigation, PW-23 filed the charge sheet.

3. The appellants/accused denied the charges framed against them and pleaded that they are not guilty. A-3 died during the trial and hence the case stood abated against him.

4. In order to prove its case, the prosecution has examined PW-1 to PW-30 and marked Exs.P-1 to P-42. The appellants have not examined any witnesses, but marked Ex.D-1, a portion of the statement of PW-16 recorded under Section 161 Cr.P.C. On appreciation of the oral and documentary evidence, the learned

Sessions Judge convicted and sentenced the appellants as noted supra.

5. This is a case based purely on circumstantial evidence. The motive set up by the prosecution is founded on the alleged extra-marital relationship between A-1 and A-4. As motive plays a pivotal role in a case based on circumstantial evidence, the Court has to carefully appreciate the evidence pertaining to this aspect. PW-1, PW-4 and PW-5 spoke about the extra-marital relationship between A-1 and A-4. PW-1 was no other than the brother of Easwaraiah. The case was registered on Ex.P-1-report given by him. He has stated in the report that he has learnt that the behaviour of A-4 was not good as she has illicit contact with some persons in the village and that he has also learnt that for about one year she was having illicit contact with A-1. In his chief-examination, all that PW-1 has stated was that A-1 and A-4 developed illicit intimacy from 2004 onwards. Thus, there is a material contradiction in the version of PW-1 on the duration of the alleged illicit intimacy mentioned by him in Ex.P-1 and his deposition before the Court. Moreover, in Ex.P-1 report, the allegation of illicit intimacy between A-1 and A-4 was hearsay. Interestingly, PW-2, who was another brother of the deceased has not spoken about the alleged intimacy between A-1 and A-4. If there was such intimacy, being the own brother of Easwaraiah, there was no possibility for PW-2 not knowing about the same.

6. PW-3, the sister of Easwaraiah and PW-1 and PW-2 also did not raise any whisper about the alleged extramarital relationship between A-1 and A-4. She attributed the intention to grab the property of Easwaraiah by A-1 and A-5 as the reason for his murder. PW-4 and PW-5 who were no other than the sons of Easwaraiah and A-4 are the only witnesses who have spoken strongly about the alleged extra-marital relationship between A-1 and A-4.

7. PW-4 who was about 15 years of age at the time of occurrence has stated that he has witnessed A-1 and A-4 in a compromising position and he has informed the same to his father (Easwaraiah), whereupon the latter has chastised A-1 and also advised him not to come to his house; that his father has also returned one chair and rug to A-1 which were kept by the latter in the house of A-3. He has further deposed that on the same night, when A-1 scolded his father in a drunken condition in filthy language, a quarrel ensued between them following which his father was kept inside the house and bolted by PW-4 and others; that two days later, A-3 intervened and brought about a compromise between A-1 and his father and subsequently, A-1 again started coming to their house. He has also narrated an incident relating to some one pouring acid in the right ear of his father a day before he was found missing and his father and A-4 going to Government Hospital for treatment. He has denied the suggestion that there was no illicit relationship between A-1 and A-4 and that he was tutored by PW-1 to depose falsely. He has admitted his father gave money to one Madduleti Setty for bringing a transformer and as the latter failed to bring the same, an altercation ensued between A-4 and his father on the one side and Madduleti Setty on the other side and that in spite of the same Madduleti Setty has failed to return the

money. He has also denied the suggestion that as A-4 was found responsible for advancing of money to Madduleti Setty, his father beat her.

8. PW-5, another son of Easwaraiah also spoke about A- 1 developing illicit intimacy with A-4. He has deposed that one day when he went to his agricultural land, he saw A-1 and A-4 lying on the "manche" and on seeing him, they came down from the "manche". He has further deposed that during the altercation between A-1 and his father, the former has challenged the latter by stating that what can he do if he takes away his wife, upon which his father and A-1 quarrelled with each other and A-3 effected a compromise.

9. Though PW-4 and PW-5 are very assertive about the alleged illicit intimacy between A-1 and A-4, considering the case of the prosecution and the alleged subsequent conduct of Easwaraiah and A-4 going together for treatment along with A-1 and A-5 - the wife of A-1, creates a strong doubt about the veracity of the testimony of these witnesses. If Easwaraiah had knowledge about the illicit intimacy between his wife and A-1 and if A-1 has challenged him as to what he can do if he takes away his wife, just a few days before his disappearance, it is highly improbable that he will forgive and trust A-1 and go with him along with his wife for treatment. If we examine the testimony of PW-4 and PW-5 from this perspective, we strongly feel that these witnesses were evidently tutored to plant the theory of illicit intimacy to nail A-1. As noted hereinbefore, while the evidence of PW-1, the brother of Easwaraiah was vague on this aspect, in their evidence PW-2 and PW-3, another brother and sister of the deceased, did not utter a word about this aspect. On the contrary, PW-3 has attributed the intention of grabbing the property of her brother Easwaraiah as the reason for A-1 to A-5 to kill him. For all these reasons, we feel that it is not safe to believe the version of PW-4 and PW-5 on the aspect of the alleged illicit intimacy between A-1 and A-4. In our opinion, the prosecution has failed to prove the alleged illicit intimacy between A-1 and A-4 and consequently it also failed to prove strong motive for A-1 to A-5 to eliminate the deceased.

10. Let us now embark upon re-appreciation of evidence on record. In a case based on circumstantial evidence, corpus delecti i.e., body of crime, should be conclusively established with reference to the person who is killed. In the absence of proper identification of the dead body, which constitutes a crucial link in the chain of circumstances, the case of the prosecution gets substantially weakened. One line of cases propounded that conviction need not necessarily depend upon corpus delecti being established and that if the prosecution is able to prove the death of the deceased as a homicide and produced clinching circumstantial evidence unerringly leading to the inference that the victim met a homicidal death at the hands of the accused, the court can convict the accused (See : Ram Cahndra v. State of U.P., AIR 1957 SC 381; Rama Nand v. State of H.P. (1981) 1 SCC 511; Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404; Kali Ram v. State of H.P., (1973)2 SCC 808; Bandhu v. Emperor 1924 All. LJ.340; State v. Sardara, 1974 CrL. LJ 43. The aforementioned Judgments related

to cases where corpus delicti was not established and the prosecution has let in strong circumstantial evidence to prove the guilt of the accused. In the instant case, the prosecution plea is rested on corpus delicti being established, but it has failed to prove that the dead body is that of Easwaraiah. As the prosecution has come out with the specific plea that the dead body is that of Easwaraiah, its failure to prove this plea is fatal to its case.

11. In this connection, it is worth mentioning that the efforts of the prosecution to prove that the skull and bones found at the alleged scene of offence are that of Easwaraiah have failed. Under Ex.P-37, at the instance of the Investigating Officer, the Judicial Magistrate of First Class, Allagadda has transmitted blood samples belonging to G. Siva Nanjundappa and G. Sankaraiah, the sons of Easwaraiah for conducting D.N.A. examination with item Nos.1, 2 and 3 i.e., a part of skull, broken pieces of bones, and a round shaped light brown colour stone, which were already sent to Regional Forensic Science Laboratory with letter of advice dated 8-9-2015. The Scientific Officer/DNA Fingerprinting Expert and the Assistant Director/DNA Fingerprinting Expert have sent Ex.P-35 report dated 14-8-2007 wherein they have opined that as there was no amplification of D.N.A. in item Nos.3 to 5 (corresponding to item Nos.1 to 3 sent to the Laboratory along with letter of advice), rendering of opinion was not possible and that amplification of those three items was necessary for comparison with the blood samples, marked as item Nos.1 and 2 mentioned in the report. For the reasons best known to the prosecution, it has failed to send the amplified D.N.A. of item Nos.3 to 5 of report dated 14-8-2007 and resultantly the expert's opinion and D.N.A. samples could not be secured by the prosecution. Thus, the prosecution has miserably failed to establish that the skull and bones are that of Easwaraiah and thereby it has failed to establish the crucial link i.e., corpus delicti.

12. To recapitulate, the deceased went missing on 17-7-2005. The skull and bones in question were recovered from the alleged scene of offence on 4-9-2005. The burden is on the prosecution to establish that the skull and bones that were found were that of Easwaraiah. The only basis on which they were sought to be linked to be that of Easwaraiah was a pair of chappals allegedly found lying near the dead body. The said chappals were said to have been sold by PW-7 who deposed that they were sold to Easwaraiah about four months prior to the incident. We perceive this piece of evidence as wholly incredulous for the reason that PW-7 being a shop keeper keeps selling chappals to various customers and it may not be possible for him to remember what type of chappals were sold by him to different customers, that too after a gap of four months after the alleged sale.

13. Another aspect which creates serious doubts on the prosecution theory pertains to the alleged discovery of the mortal remains of Easwaraiah. According to the case of the prosecution, the discovery of the skull and bones in question was made following the arrest of the appellants on 4-9-2005. Contrary to this

plea, PW-1 in his cross-examination deposed that on his report appellant No.4 was arrested on 15-8-2005 and on the same night, A-5 was also brought to the Police Station and that all the accused were arrested on 16-8-2005. PW-2 has also stated in his evidence that appellant No.4 was in the Police Station along with the remaining accused for a period of 15 days. From this evidence, it appears that the prosecution has not come out with true facts relating to the actual date on which the skull and bones were recovered. As it has come out in the evidence that by 15-8-2005 itself all the appellants were arrested, if at all, if the Police would have found the dead body of Easwaraiah immediately thereafter. As the police failed to trace the whereabouts of Easwaraiah, they have evidently come out with the plea that on their arrest on 4-9-2005, the appellants have led the police to the alleged scene of offence where the skull and the bones allegedly that of Easwaraiah were recovered. If the mortal remains recovered really are that of Easwaraiah and the appellants were responsible for his killing, the police would have been led to the scene of offence on 15-8-2005 itself, by which date all the accused were apprehended. As the time gap between the date of missing of Easwaraiah i.e., 17-7-2005 and 15-8-2005 being 28 days only, if really the dead body was that of Easwaraiah, there was no possibility of the same getting reduced to the state of only skull and bones within such a short duration. All this would lead to the reasonable doubt that not being able to trace out Easwaraiah who went missing, the Police has planted the skull and bones belonging to someone else.

14. The last seen theory set up by the prosecution also suffers from an inherent short-coming. According to the prosecution, PW-16 has last seen Easwaraiah in the company of the appellants at the bus stop on 17-7- 2005 and immediately he is said to have informed the same to PW-3. PW-3 being the own sister of PW-1, PW-2 and Easwaraiah, it is reasonable to infer that she was aware of the fact. However, in his report given on 14-8-2005, PW-1 failed to mention the fact that PW-16 has last seen the accused boarding the bus together with Easwaraiah on 17-7-2005. The prosecution has also attempted to implicate the appellants in the alleged death of Easwaraiah by examining PW-25, the Manager of Sri Balaji Lodge and PW-18, the Manager of Sri Krishna Lodge, Nandikotkur who deposed that on 17th and 18th respectively all the appellants have stayed in their respective hotels of which they were the Managers. This fact by itself cannot establish the involvement of the appellants in the alleged murder case. Neither of these witnesses has seen Easwaraiah in the company of the appellants. All the circumstances discussed above would cause a serious clout on the case of the prosecution leaving many links in the chain of circumstances connecting the appellants to the alleged crime.

15. Another facet of the prosecution case which sounds highly unnatural and improbable is the alleged involvement of A-5, the wife of A-1, in the alleged murder of the deceased. As per the prosecution theory, the motive for the murder is the alleged extra marital relationship between A-1 and A-4. If that be so, it is highly unthinkable that A-5, the wife of A-1, will be part of the conspiracy

to do away with the husband of A-4 to facilitate her husband (A-1) to continue the extra marital relationship with A-4, detrimental to her interests.

16. The Court below has failed to properly appreciate the evidence on record and convicted the appellants and sentenced them in the absence of strong evidence establishing the guilt of the appellants beyond reasonable doubt.

17. In the result, the Criminal Appeal is allowed. The appellants/accused Nos.1, 2, 4 and 5 are found not guilty of the charges framed against them. The conviction and sentences recorded against the appellants are accordingly set-aside. They shall be released forthwith, if not already released and not required in connection with any other offence. The fine amounts, if any paid, shall be returned to them.