
(2008) 10 SC CK 0023
In the Supreme Court Of India
Case No : Criminal Appeal No. 1263 of 2005

Mondri Sreenu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 342
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 2009 SC 677 : (2008) 12 JT 38 : (2008) 14 SCALE 205

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : Ansar Ahmad Chaudhary, for the Appellant; Altaf Fathima and D. Bharathi Reddy, for the Respondent

Final Decision : Allowed

Judgement

1. Appellant is before us aggrieved by and dissatisfied with the judgment and order dated 12.10.2004 passed by the High Court of Andhra Pradesh at Hyderabad, whereby and whereunder the appeal preferred by him from a judgment and order dated 21.12.2001 passed by the learned Sessions Judge, Khammam in S.C. No. 143/2001 convicting the appellant herein for commission of an offence punishable u/s 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life and also to pay a fine of Rs. 100, in default to suffer R.I. for one month, was dismissed.

2. The basic fact of the matter is not in dispute.

3. The deceased Batta Chandramma is the mother-in-law of the appellant. Appellant married her third daughter Bhadrakali sometime in 1990. A daughter and a son were born to them. As appellant is said to have started harassing his wife by beating and abusing her, she deserted him and went to her parents house at Chinthalagudem Village and started living with them. Appellant, thereafter, married another woman. However, he came to Village Chinthalagudem where his parents-in-law were residing, to live with them. But

after 10 days he started harassing his wife again. Batta Chandramma (the deceased) - mother-in-law of the appellant allegedly used to quarrel with him and had asked him to leave the house.

4. On 19.10.1999, the deceased went to the agricultural field belonging to the family and she did not return till evening. On enquiry, one B.P. Veraiah informed the informant that he had seen the appellant in the fields and also heard some cries. Pursuant thereto, Pitchaiah, Chinna Veeraiah, Barla Ram Babu and Degala Veeraiah went to the fields in search of Chandramma. They found her dead body lying in a pool of blood. Her sari was also tied around her neck. Accusing the appellant as the person responsible for her death, a first information report was lodged. Appellant was arrested at about 8.30 P.M. on 22.10.1999, He admitted his guilt and confessed about the commission of the offence. He also made a disclosure statement pursuant where to a stick and a stone, which were said to have been used in the commission of the offence, were recovered. The said articles were seized.

5. Appellant was produced before Shri R. Verra Reddy, Mandal Magistrate, Dummugudem on 4.11.1999 and his confessional statement was recorded.

6. Before the learned Sessions Judge, the prosecution examined 18 witnesses. We, however, need not deal with the depositions of all the prosecution witnesses. Suffice it to point out that PW-1 (Batta Fitchaiah) - father-in-law of the appellant in his deposition categorically supported the statements made in the first information report before the S.H.O. of Bhadrachalam Police Station. PW-2 Bhadrakali, who is the wife of the appellant, also supported the prosecution case, PW-3 Batta Fedda veeraiah and PW-4 Batta China Veeraiah, who were brothers of FW-1 and had been working in the adjoining fields, deposed that they had seen appellant and the deceased together. PW-3 categorically stated that whereas the deceased Chandramma was sitting on 'Mancha' in her paddy field, the appellant (accused) was standing near it and Chandramma was shouting at appellant. Thinking that the same was a common affair between them, he went to his work. The evidence of PW-4 is also to the same effect.

7. PW-5 Degala Veeraiah is a resident of Chinthalagudem Village. He in his deposition categorically stated that on the date of incident, while he was grazing his bulls at the pastures at about 1.00 P.M., he found the appellant going towards the field of PW-1. He furthermore found the appellant coming back in a hurry at about 4.00 P.M. He called him (appellant) but he did not give any reply to his call and went away. On the same night he learnt that Chandramma was found dead in the fields.

8. PW-6 Barla Raghavulu who is also a resident of Chinthalagudem Village, a mason by occupation, in his evidence stated that 3 days after the death of Chandramma, he saw the accused while he was talking to his brother at Bhupathiraopeta Colony. When the accused was questioned, he confessed before him that he killed his mother-in-law as she had not been allowing him to live

with his wife (PW-2). appellant was caught by the said witness and then handed over to the S.H.O., Bhadrachalam Police Station.

9. PW-7 K. Rajamma is said to be the second wife of the appellant. She came to learn about the first marriage of the appellant one year after her marriage with him, Thereafter, she left his company. According to her also, appellant used to beat her after consuming alcohol.

10. One D. Motiya, who examined himself as PW-8, was residing in the house adjacent to the house of the deceased. He also testified that the appellant used to harass his wife PW-2 whereupon a Panchayat meeting was convened and the appellant was chastised. He also deposed that after the meeting of the Panchayat, appellant came to his in-laws' place and started living there. He also proved that Chandramma used to harass and warn him to go out of the said house but he continued to live there. Almost to the same effect is the evidence of PW-9. Both PW-8 & PW-9 supported the prosecution case.

11. The learned Sessions Judge having regard to the aforementioned materials brought on record by the prosecution found the appellant guilty of commission of offence and recorded a judgment of conviction and sentence in the manner as noticed hereinbefore.

12. The High Court on appeal preferred by appellant has affirmed the said judgment of conviction and sentence.

13. Mr. Ansar Ahmad Chaudhary, learned Counsel appearing on behalf of appellant would raise the following contentions in support of this appeal:

(1) That the recovery of stone having been made from an open place, no reliance could have been placed thereupon by the Courts below.

(2) The evidence of PW Nos. 3, 4, 5 & 6 could not have been relied upon by the Courts below as it was wholly unbelievable that although they had been working in the adjoining fields, but did not come to the rescue of the deceased despite her cries.

(3) PW-1 - the informant in the first information report did not make any statement as to how the death of the deceased took place and as such prosecution must be held to have failed to prove its case.

(4) No reliance can be placed on the statement of the appellant purported to have been made u/s 164 of the Code of Criminal Procedure as no requisite warning, before making the statement, that the same can be used against him in the criminal case was given.

14. Learned Counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

15. The background fact in which the offence was alleged to have been committed is not in dispute. The relationship between the parties is also not in

dispute. The fact that appellant had married PW-2 and they had been living separately for a few years before he came to his parents-in-laws' house to live with his wife has also not been disputed.

16. Out of those witnesses who had deposed in support of the prosecution case for proving the guilt of appellant, not only PW-5, but also the second wife of the appellant who are independent witnesses, to a large extent, supported the prosecution case. The strained relationship between appellant and the deceased must be held to have been proved. PW-2 who is the wife of the appellant, had completely supported the prosecution case in that regard.

17. The prosecution case must also be considered from another angle. PW-6, although is a resident of Chinthalagudem Village, who had been earning his livelihood by working as a mason, used to visit Bhadrachalam. He found the appellant talking with his brother at Bhupathiraopeta Colony at about 7.30 P.M. on 22.10.1999. Appellant made an extra judicial confession before him. The reason that the deceased did not allow him to live with his wife (PW-2) was said to be the reason for commission of the offence. It was at that point of time he caught hold of appellant and handed him over to the S.R.O. of the Bhadrachalam Police Station.

18. Yet again in the Police Station/ the appellant made a confession. Apart from the Investigating Officer (PW-18), a confession was also made before PW-14 Yalam Kondal Rao, a resident of Bhadrachalam.

19. Appellant did not raise any contention that he did not make any extra judicial confession or a confession before the Judicial Officer as also before the PW-14. Indisputably, he was produced before the Mandal Officer. The investigation of the case was taken up by PW-18 Devadas. He produced the appellant before the Mandal Magistrate R. Veera Reddy on 4.11.1999. His statement was recorded u/s 164 of the Code of Criminal Procedure.

20. Submission of the learned Counsel for the appellant Mr. Ansar Ahmad Chowdhary that PW-15 Veera Reddy did not comply with the provisions contained in Section 164 Cr.P.C. may not be of much significance. Bhadrachalam falls within a scheduled area in the State of A.P. The State of A.P., this Court can take judicial notice, had not extended the provisions of the new Cr.P.C. to the scheduled areas of the State of A.P. This fact would be evident from the fact that appellant was examined in terms of Section 342 of old Cr.P.C. As there is no separation of the Judicial and Executive Officers, appellant was produced before the Executive Officer for recording his statement u/s 164 of Cr.P.C, As the provisions of the old Code were applicable, the precautions which were required to be taken in terms of Section 164 of the 1973 Code were not complied with.

21. Be that as it may, appellant never retracted the said confession. A statement made by the accused u/s 164 of Cr.P.C. is admissible in evidence. Apart from the judicial confession, as noticed hereinbefore, the appellant has also made extra judicial confession before PW-6.

22. PW-17 Dr. Jhansi Lakshmi, Civil Assistant Surgeon, Area Hospital, Bhadrachalam, who conducted the post-mortem over the dead body of Chandramma, found the following ante-mortem injuries:

1. Lacerated wound 3x2x2 cms. over the forehead.
2. Loss of right eye-ball.
3. Lacerated wound 3 x 4 x 1 cms, over dorsal aspect of left foot.
4. Lacerated wound 3 x 1 x 1 cms. over left side of abdomen.
5. Abrasion 3x2 cms. over right elbow region.
6. Contusion 5x6 cms. on right temporal region.
7. Contusion 3x3 cms. over right cheek.

23. The said Dr. Jhansi Lakshmi was examined as PW-17. In her deposition before the learned Sessions Judge, she categorically stated that those ante-mortem injuries were possible to have been caused by a blunt object like stone or stick. She found a fracture of ribs on the right side of the deceased, as a result of which a laceration of the right lung was found to be present. She also found 300 CC fluids blood in the right plural cavity, ligature mark on the neck of the deceased, congestion and haemorrhage by the side of the ligature mark and subdural haemotoma on right temporal region. In the aforementioned background, PW-1 had not been able to specifically state the cause of death and he must be held to be a truthful witness. The exact cause of the death of the deceased, thus, in the aforementioned situation could not have been certain to a layman, like PW-1 and other witnesses.

24. It may be true that the stone was found in an open place. But unless and until the site thereof was pointed out, as the Investigating Officer (PW-19) categorically stated, he could not have identified the weapon which was used for commission of the offence. It was found to be blood stained. Apart from the stone, a stick was also pointed out by the appellant which led to its discovery.

25. It is, therefore, not a case where the Courts below could have totally ignored recovery of the said articles. Furthermore, although not strictly admissible, even a confession was made by appellant in the Police Station before PW-14 and one Seetha Ramulu. Their statements before the Court are also now not in dispute.

26. Submission of the learned Counsel for appellant that the 'last seen' theory propounded by the prosecution cannot be relied upon, is, in our opinion, not of much substance. It has not been denied or disputed that the brothers of PW-1, namely, Batta Fedda Veeraiah (PW-3) and Batta China Veeraiah (PW-4) had lands by the side of the land of the deceased and PW-1. PW-3 in his statement, categorically stated that although appellant and the deceased were found to be quarrelling with each other, he ignored the same as that had become almost a routine affair. He came to know about non-return of the deceased from the field

only in the evening.

27. Furthermore, not only PW-3 and PW-4 but other prosecution witnesses whose independence is not in question, also proved the presence "of appellant near the place of occurrence on the date of occurrence between 1.00 P.M. and 3.00 P.M. According to the post-mortem report, that was the probable period during which the offence is said to have been committed.

28. For the reasons aforementioned, we are of the opinion that there is no merit in this appeal which is dismissed accordingly.