
(2004) 10 SC CK 0053
In the Supreme Court Of India
Case No : Criminal Appeal No. 1290 of 2003

Orsu Venkat Rao	Vs	APPELLANT
State of Andhra Pradesh		RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2004) 3 ACR 2654 : AIR 2004 SC 4961 : (2004) AIRSCW 5666 : (2004) 2 ALD(Cri) 1029 : (2005) 1 ALT(Cri) 1 : (2005) 99 CLT 72 : (2004) CriLJ 4656 : (2005) 1 MhLj 371 : (2005) 1 RLW 110 : (2004) 8 SCALE 826 : (2004) 13 SCC 243 : (2004) 7 Supreme 434

Hon'ble Judges : P. Venkatarama Reddi, J;B. P. Singh, J

Bench : Division Bench

Advocate : Radha Krishnan and S. Usha Reddy, for the Appellant; G. Venugopal and D. Bharati Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddi, J.—The accused was charged u/s 302 IPC for the alleged murder of his wife by name Chilakamma on 4th March, 1993 at about 9.00 p.m. at their house by strangulating with a rope and hanging her to the beam. He was also charged u/s 201 IPC for causing disappearance of evidence by shifting the dead body to his native place in a different village. On trial by the Sessions Judge, Khammam he was convicted under Sections 302 and 201 IPC and sentenced to life imprisonment. On appeal, the High Court confirmed the conviction and sentence and dismissed the appeal. The High Court as well as the Sessions Court, mainly relied on the evidence of two child witnesses--PWs 2 & 16 who were aged six years and ten years respectively on the date of the incident. At the time they gave evidence in the Court, they were of the age of 13 years and 17 years respectively.

2. The accused, who belonged to 'Wyra' village in Khammam District of Andhra Pradesh, moved to 'Garla' village with his family for eking out his livelihood by

digging the wells. They were living on rent in a portion of the house belonging to PW4's husband who was a teacher. It is the case of the prosecution that the accused used to consume liquor and beat up his wife now and then suspecting her fidelity. On the crucial day i.e. 4th March, 1993, it is alleged that the accused returned home by about 9.00 p.m. after consuming toddy and abused the deceased casting aspersions on her character. When she protested, he dragged her to the middle room of the house where the two children (PWs 2 & 16) were lying on the bed and tied a rope around her neck and placed the rope on the beam about 9 feet above the floor level and hanged her till death. As the children started crying, he commanded them to keep quiet showing a sickle against them. Thereafter, he bolted the door from outside and remained in another room. After sometime, the children raised hue and cry to alert the neighbour. It is alleged that PWs 3 & 4 living in the adjacent portion, after hearing the cries of PWs 2 & 16 that their mother was hanged to death, rushed to the other portion of the house. The accused opened the door and when they went inside they found that Chilakamma was hanging to the beam with a rope tied to her neck. Thereafter, the accused cut the rope and brought the body of Chilakamma outside and she was carried to the Government hospital at Garla by the accused and others. The two sons also accompanied. The Doctor at the hospital declared that she was dead. The accused took the dead body in a jeep to Wyra where the parents of the accused were residing. The accused gave impression to others that she died (committed suicide) on account of fits. The accused sent a message through PW8 to the parents of the deceased in the morning hours of 5.3.1993 that the deceased was hospitalized. PW1--the brother of the deceased Chilakamma, with his parents and others went to Wyra. Having seen the dead body and the injuries thereon, the father of PW1 lodged a report in the police station at Wyra at about 3.00 p.m. on 5.3.1993 in which he stated that he was suspecting his son-in-law--the accused for causing the death of his daughter. The FIR was prepared and the crime was registered by PW21 (Head Constable) who went to the spot and held the inquest over the dead body between 3.30 and 5.30 p.m. In the inquest report, it was noted that the ligature marks were found around the throat of the deceased. During the inquest, PW21 examined the father of the deceased--the informant, his wife and PW1. He sent the dead body to the Government hospital at Madira for postmortem. As the place of occurrence was within the limits of Garla police station, he transferred the case file to Garla police station with a covering letter (Ext.P17) which according to PW19 was received at about 8.00 p.m. on 5.3.1993. Thereafter, PW19--the Sub-Inspector of Garla police station, reregistered the case and took up the investigation. He claimed to have recorded the statements of PWs 2 & 16 on the same day. He examined the father of the deceased and the two children--PWs 2 & 16 at Garla on 6.3.1993 at the house of the accused. From that stage onwards, the investigation was taken up by PW20--the Inspector of Police, Garla Bayyaram. PW20 visited the scene of offence on 7.3.1993 and prepared a rough sketch of the scene. He claims to have reexamined PWs 2 & 16 apart from the informant, his wife and son (PW1), PWs 3 to 6 and three others on 6.3.1993 itself. On the next day, he examined PW8 and

others. On 15.3.1993, he filed a requisition before the J.F.C.M., Kothagudem to record the statements of the two sons of the deceased. Accordingly, they were recorded. The accused was arrested on 26.3.1993. At his instance, the two pieces of ropes (M.Os. 3 & 4) placed in a heap of husk within the house were recovered in the presence of panch witnesses. On receipt of lab reports, he filed a charge-sheet on 8.2.1994.

3. PW18, the Civil Assistant Surgeon attached to Government Hospital, Madhira conducted postmortem examination of the dead body of Chilakamma. He found bleeding from nose, multiple abrasions over front of right and left elbows and multiple scratches behind left upper arm and elbow. He found a ligature mark around the neck over both sides of upper back portion of the neck. On internal examination, he found the hyoid bone fractured. The upper part of chest wall, esophagus, trachea and both lungs were congested. He collected the viscera from the dead body for examination by experts. He reserved the opinion as to cause of death. On receipt of report from the Department of Forensic Medicine and the Forensic Science Laboratory, PW18 gave the opinion as per Ext. P11 that death was on account of asphyxia due to hanging. He deposed that the ligature marks were ante mortem in nature and that it was not possible to say whether ligature marks were attributable to suicide or homicide. He clarified that the injuries other than the ligature marks cannot be self-inflicted.

4. As the case of the prosecution mainly turns on the evidence of PWs 2 & 16, which was in fact the sole basis of the conclusion reached by the High Court, we have to analyze the evidence of the two child witnesses with care and caution. Both of them deposed that they went to watch T.V. in the adjacent portion of the house belonging to the owner and returned home by about 8.00 p.m. and slept in the middle room while their mother was awake waiting for their father. At about 9.00 p.m. their father returned home in a drunken condition and started abusing and talking ill of their mother's character. Then the accused assaulted her with an iron rod (this was stated only by PW16 and not by PW2). Then she was dragged to the room where they were resting. The accused then placed a rope around her neck, threw the rope over the beam and pulled the rope so as to cause her death. She was made to hang from the beam. When they cried and tried to intervene, the accused threatened to harm them showing a sickle towards them. Then, by bolting the door from outside, he slept in the first room. After some time, they raised hue and cry. Then PWs 3 & 4 came there and unbolted the door. Thereafter, their mother was taken to the hospital in a "doli" by their father accompanied by them and PWs 3 & 6. She was pronounced dead by the doctor. Then, the accused brought a hired jeep and took the dead body to the village Garla where their paternal grandparents were living. They also went in the jeep with the dead body. After sometime, their maternal grandparents and relatives came knowing about the death of their mother. PW2 would say that his father threatened them and asked them to tell others that his mother died on account of fits (perhaps meaning that she committed suicide in view of fits). PW2 further stated that his maternal grandparents enquired at about 7.00 or 8.00

p.m. on the next day (i.e. 5.3.1993) and at that point of time they revealed the real reason for the cause of death of their mother. However, PW16, the elder boy did not state so. The suggestion that they were tutored by the maternal grandparents was denied.

5. The question is whether it is safe to act on the evidence of these two child witnesses who were aged 6 and 10 at the time of incident. There are certain glaring facts which cast a serious doubt on the veracity of the prosecution version based on the evidence of PWs 2 & 16. Till the inquest concluded on the evening of 5th March, 1993, according to the prosecution, the boys who are alleged to have seen the actual incident were not examined nor did they reveal anything to anyone including maternal grandparents. Even PW1, the maternal uncle of the boys does not say a word as to whether any enquiries were made with the boys and what their response was. To cover up these improbabilities, PW2 came forward with a version that at about 7.00 or 8.00 p.m., his maternal grandparents came and enquired in the absence of their father and then they told them as to how their mother died. This statement in the chief examination gives an impression that PW2 was tutored to give such evidence to find an explanation for their alleged belated revelation and to buttress the prosecution version that they gave the details of the version for the first time to PW20 only in the night of 5th March, 1993 after he and his brother went back to Garla. But this prosecution version has been shattered by the categorical statement of PW2 that on the date of complaint itself he gave his statement to the police at Wyra. In fact, PW16 stated that after the police came and saw the dead body of his mother, his maternal grandparents and uncles asked him as to how his mother died. It shows that the version of PWs 2 & 16 was very much within the knowledge of their maternal grandparents and PW1 and there is no reason why they withheld the information to the police. PW21, who held the inquest, came forward with a curious version that he did not see the children when he went there and therefore he could not record their statements. But, such version of PW21 is demolished by the evidence of PWs 2 & 16 themselves which discloses in unmistakable terms that they were very much available at the place. The first thing that any Police Officer should have done was to enquire from the children who were in the know of things. No sensible police officer would refrain from examining the children at the earliest opportunity. Hence the statement of PW2 that they were examined at Wyra itself by the police must be correct. But, as per the police records, the examination of PWs 2 & 16 took place at 'Garla' at the house of the accused (scene of offence) only in the night of 6th March, 1993 when PW19 reached there after getting the case file from 'Wyra' at about 8 p.m. Again coming back to the deposition of PW16 on this aspect, this is what he said:-

"After that" i.e. after the dead body was brought from Garla to Wyra, "my maternal grand-parents and relatives came there knowing about the death of my mother. Police examined me and recorded my statement".

6. Thus, we have strong reason to infer that the prosecution suppressed the

earliest version of the two child witnesses--PWs 2 & 16. That makes the entire prosecution case vulnerable and doubtful. That apart, an analysis of the account given by PWs 2 & 16 would reveal that it goes against the natural course of conduct and probabilities.

7. Multiple abrasions were found on the deceased which were not self-inflicted. That means, before strangulation, there should have been severe resistance by the deceased and in that process she would have received these injuries. But, nothing is mentioned about the fight by PWs 2 & 16. In fact, the deceased herself would have cried aloud and it could have been easily heard by PWs 3 & 4 who were living in the adjacent room. PWs 3 & 4's evidence reveals that they could hear the voice and cries of children at a later point of time. If there was a fight and when the fight was going on, at least PW 16, who was aged 10 years would not have kept quiet. He would have raised hue and cry or run out of the house for help.

8. According to PW2, they cried and raised the alarm only sometime after their father left the room bolting the door from outside. It is to be noted that the process of strangulation and throwing the rope over the beam which is 9 1/2 feet above the ground level, and then tying the rope around the beam is not a simple process. It would have taken considerable time. Is it possible to believe that all this time, the children were confined to their bed, though there was ample time and possibility of moving out during the time the accused was committing the crime? Apart from the unnatural conduct and responses of PWs 2 & 16, we have a doubt whether the hanging of the victim to the beam as spoken to by PWs 2 & 16 was at all possible. The beam, according to the observation of the I.O. was 9 1/2 ft. above the ground level. It is doubtful whether it was possible to throw the rope on the beam after fastening it around her neck and then hang her while standing on the floor. For all these reasons, the evidence of the two children who claimed to be the eyewitnesses does not inspire confidence.

9. The evidence of PWs 3, 4 & 6 is in the nature of corroborating evidence. They are supposed to have gone to the house of the accused after hearing the cries of the children. Before advertng to the evidence of PWs 3 & 4, it must be noted that they are the brother and mother of PW5 by name Mohan with whom the deceased had illicit contact, according to the defence version. PW5 was confronted with the statements made to the police (D4 & D5) that he was having illicit intimacy with the deceased and that on the crucial day and just before the occurrence he was spending time with Chilakamma after leaving the house on the false pretext of movie (2nd show). Of course, he denied having stated so to the police. This background should be kept in view while appreciating their evidence. PW4 comes forward with a version that around 9.30 p.m., on hearing the cries of PWs 2 & 16, she made queries from her house as to why they were weeping and they informed her that their mother was hanged by a rope by their father. Then she and her son PW3 went to the house of the accused and saw the deceased hanging from the beam. It is doubtful whether the words alleged to

have been uttered by PWs 2 or 16 from an enclosed room be heard by PW4 though the noise and cries could have been heard in view of the fact that they were living in the adjacent portion of the house. If PW4's version was correct, immediately on meeting the children, she would have ascertained the details from the children or she would have revealed it to others immediately. In fact PW3 did not go to the extent of saying that they over-heard the children saying that the accused killed their mother by hanging her. He only stated that they knocked at the door whereupon the accused opened the door and the children on seeing the mother embraced her and thereafter they saw the deceased in hanging posture. Thus the evidence of PW4 in so far as she put certain incriminating words in the mouth of the children is unbelievable. PW6 is a neighbour, residing in the house in the opposite direction. She deposed almost on the same lines as PW3. One fact to be noticed is that this witness and her husband accompanied the deceased along with the accused and the children to the hospital. She did not state anything as to what the children revealed to her though she was in their company for a considerable time.

10. There is one more aspect which deserves to be noticed in the context of evidence of PWs 3, 4 & 6. All of them in one voice stated that the police examined them at about noon time on the next day and recorded their statements at Garla which means the investigation at Garla had started even by 5.3.1993 whereas it is made to appear that such investigation commenced only in the night of 6.3.1993, i.e. nearly 33 hours later, as spoken to by PW20. Thus the earliest statements of PWs 3, 4 & 6 seem to have been suppressed. This is another infirmity in the prosecution case.

11. We are constrained to go into the matter in detail for the reason that the judgment of the High Court is sketchy and slipshod. What all has been said by the High Court is that the evidence of PWs 2 & 16 inspires confidence and their testimony remained unshaken in cross examination. It is further observed that the evidence of these witnesses is corroborated by medical evidence without appreciating the fact that PW18--the doctor was unable to say from the ligature marks or other features, whether the death was suicidal or homicidal. There was no critical evaluation of the evidence of the two child witnesses and there was no consideration of material aspects bearing on the veracity of the version given by PWs 2 & 16. In these circumstances, we cannot put our seal of approval to the conclusions of the High Court though concurrent they are. True, the circumstances raise strong suspicion against the accused, but it is difficult to sustain the conviction, once the evidence of the alleged eyewitnesses is discarded as unworthy of credence. This is a case in which benefit of doubt should have been given to the accused.

12. Accordingly, the appellant's conviction and sentence is set aside and the appeal is allowed. The appellant, who is in jail, shall be set at liberty forthwith.