

(1995) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 278, 424 and 992 of 1994

Pilli Vital

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 337, 376, 377, 379

Citation : (1995) 2 ALT(Cri) 23 : (1995) 2 APLJ 193 : (1995) CriLJ 3240

Hon'ble Judges : P. Ramakrishnam Raju, J;B.S. Raikote, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, K. Raji Reddy and P. Raghava Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—A-1 to A-3 in S.C. No. 126 of 1991 filed these criminal appeals. CrI.A. No. 278 of 1994 is filed by A-2 who was convicted u/S. 376 IPC and sentenced to suffer RI for 8 years and also to pay a fine of Rs. 200/- and in default, to suffer SI for 2 months. CrI.A. No. 424 of 1994 is filed by A-1 who was convicted u/s 337 IPC and sentenced to suffer RI for 10 years and also to pay a fine of Rs. 200/- and in default to suffer SI for 2 months. CrI.A. No. 992 of 1994 is filed by A-3 who was convicted u/s 376 IPC and sentenced to suffer RI for 8 years and to pay a fine of Rs. 200/- and in default to suffer SI for 2 months. All the 3 accused were convicted u/s 302 IPC and sentenced to suffer imprisonment for life. They were also convicted u/s 379 IPC and sentenced to suffer RI for 3 years. All the sentences were directed to run concurrently.

2. The prosecution case in brief is as follows :

On 20-5-1990 at about 9.00 P.M., A-1 took the deceased Ekkari Kishtavva from the house of P.Ws. 8 and 9 towards cross-roads of Podchanpally village. On the way, A-2 and A-3 joined him. Then all the accused took the deceased to the paddy fields of Boggari Anji Reddy. Then A-1 had carnal intercourse with the deceased while A-2 and A-3 committed rape and later, all of them murdered her and committed theft of gold and silver ornaments and some other properties

from the deceased.

3. The deceased is the younger sister of PW-1 and PW-2 is the younger brother of the deceased. They are the residents of Podchanpally village. The deceased resided in the said village for some time after the death of her husband. There was a panchayat held in their village with regard to the illegal intimacy between A-2 and the deceased. After the said panchayat, the deceased left for Rayalamadugu Village, which is her husband's village. On 19-5-1990, a Saturday, the deceased came to Podchanpally village to attend the marriage of the son of PW-3. In the evening, PW-2 and the deceased consumed toddy and went to their house. Then PW-1 and his mother asked the deceased to go away from their house. So the deceased went to the house of PW-3. On Sunday morning, PW-2 went to his fields and returned in the evening. To enquire about the deceased, he went to the house of PW-3. Later, he went to the chowrastha of Podchanpally village and found the deceased along with A-1 and A-3. PW-2 took the deceased to the toddy shop and they consumed toddy. A-1 and A-3 also offered toddy to PW-2 and, the deceased, but PW-2 refused. Later, PW-2 and the deceased were returning and on their way, the deceased stopped at the house of Janiava. Then the wife of PW-2 came there and requested the deceased to come to their house, but the deceased refused. PW-2 then left along with his wife to their house. On Sunday at about 8.30 or 9.00 P.M., the deceased and A-1 came to the house of PW-8. A-1 told him and his wife PW-9 that the deceased quarrelled with her mother and she required food. Then they gave her food. After taking food, A-1 took the deceased stating that her child would weep for the deceased. At that time, the deceased was in a state of intoxication. A-1 caught hold of her hand and took her from the house of PW-8. At 9.30 P.M., P.Ws. 4 to 7 who were sitting on the pial of PW-4, noticed them walking together towards Meedigattu. On the next day morning, PW-2 visited the house of one Vadala Veeraiah to repair his plough. There, he was informed that the dead body of the deceased was found lying in Barlolla pole near Durgamma temple. Then he went and saw the dead body and found injuries on neck, chest, breast and private parts of the deceased and her ornaments M.Os. 1 to 6 were removed from her neck. On Sunday night, PW-1 went in search of she-buffaloes and when he returned in the morning, he was informed about the death of his sister. Except the wrist rings and ear studs, all other ornaments of the deceased were stolen away. P.Ws. 4 and 5 informed him that the deceased was seen along with A-1 at 9.30 P.M. on Sunday. Then, he saw the dead body of his sister and gave a report, Ex. P-1 in Papannapet Police Station. On 21-5-1990, PW-13 the S.I. of Police received the written report from PW-1 and registered a case as Crime No. 48 of 1990 under Sections 302 and 379 IPC. He along with his staff proceeded to the scene of offence, examined P.Ws. 1 to 5 and conducted panchanama in the presence of PW-10 and another. He seized bangle pieces, blood stained earth and controlled earth. He prepared Ex. P-2 inquest report. PW-11, the Dy. Civil Surgeon, Jogipet conducted autopsy over the dead body of the deceased and issued post-mortem certificate, Ex. P-3. The C.I. of Police took over the

investigation and examined P.Ws. 6 to 9 and recorded their statements. He arrested the accused on 28-5-1990 recorded their confessional statements and recovered stolen gold and silver ornaments M.Os. 1 to 8. He also prepared the panchanamas in the presence of P.Ws. 12 and another under Exs. P-4 to P-6. After completion of investigation, he filed the charge-sheet.

4. The prosecution examined 14 witnesses on their side and marked Exs. P-1 to P-8, while none were examined on behalf of the accused except making two contradictions under Exs. D-1 and D-2.

5. The learned Additional Sessions Judge believing the evidence of P.Ws. 2 to 9, convicted the accused as stated above. P.Ws. 5 and 12 were declared hostile. Hence these appeals.

6. Sri C. Padmanabha Reddy, the learned senior advocate appearing on behalf of the appellants argued that there are no direct witnesses to the occurrence and that in a case of circumstantial evidence, all the links of the chain must be established to prove the guilt of the accused. According to the learned counsel, the only circumstance that was established by the prosecution is that the deceased was last seen in the company of the 1st accused on the night of 20-5-1990 at 9.30 P.M. as spoken to by P.Ws. 8 and 9 from whose house, A-1 took the deceased after she took food. The evidence of P.Ws. 4 to 7 is also to the effect that they saw A-1 and the deceased going together around that time. This by itself is not sufficient to establish the several charges framed against the accused. He further contends that although PW-14, the Inspector of Police, arrested the accused, the recoveries of M.Os. 1 to 6 under Exs. P-4 to P-6 panchanamas were not satisfactorily proved. In fact, PW-14 himself does not say which jewel was recovered from which accused. PW-12 who is said to be present at the time of recovery of these Material Objects, did not support the prosecution case. Therefore, according to the learned counsel, the recoveries are highly doubtful. Apart from the lack of oral evidence, even the evidence of the Doctor PW-11 and Ex. P-3 post-mortem certificate, do not show that the accused have committed any offences punishable u/s 376 or 377 IPC.

7. We may straight way state that in a case of circumstantial evidence, it is the duty of the prosecution to establish that all the links only indicate an irresistible conclusion pointing out the guilt of the accused. In this case, except the circumstance that the deceased was last seen in the company of A-1, nothing more was established. Even assuming that the evidence of P.Ws. 1 to 9 can be believed, it does not establish that A-1 to A-3 are guilty of the offence punishable under Sections 376, 377 or 302 IPC. So far as A-2 and A-3 are concerned, the prosecution witnesses do not say that they have seen the deceased along with the accused on the fateful night. Therefore, the charge against the accused under Sections 376, 377 and 302 IPC must be held as not proved. So far as the 4th charge is concerned, all the accused were convicted u/s 379 IPC. Here, PW-14 arrested the accused and recovered M.Os. 1 to 6 from them under Exs. P-4 to P-6. No doubt, in his evidence, he does not state as to which jewel was

recovered from which accused. But the evidence of P.Ws. 1 and 2 clearly establishes that these material objects belong to the deceased. PW-1 has stated in his re-examination that all the material objects were prepared by him and they were worn by the deceased. So also, PW-2 says that M.Os. 1 to 8 were worn by the deceased prior to her death and they were all removed when he had seen her dead body. Therefore, we find that M.Os. 1 to 6 belonging to the deceased were recovered from the possession of A-1 to A-3. Of course, M.Os. 7 and 8 were not recovered from them, but they were only recovered from the dead body as stated by PW-1. Since M.Os. 1 to 6 were recovered from the accused, they are certainly guilty of the offence punishable u/s 411 IPC. Even assuming that there is no direct evidence to fasten the liability on the accused for theft u/s 379 IPC, but they must be presumed to have the knowledge that the articles are the stolen articles and therefore, the possession of these articles will certainly implicate them for the offence punishable u/s 411 IPC. Although the learned Additional Sessions Judge convicted the accused for the offence punishable u/s 379 IPC, we are of the opinion that the proper section under which they should have been convicted is only Section 411 IPC. Accordingly, we alter the section and convict them u/s 411 IPC and sentence each of the accused to suffer RI for 2 years. The convictions and sentences imposed against the accused under Sections 376, 337 and 302 IPC are set aside.

8. The appeals are allowed to the extent indicated above.

9. Order accordingly.