
(1995) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 647 of 1994

Pochammala Yellappa

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 215, 235(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (1995) 1 ALT(Cri) 558 : (1995) 1 APLJ 383 : (1995) CriLJ 3187

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

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Additional Public Prosecutor, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—The sole accused in Sessions Case No. 156 of 1992 on the file of the Additional Session Judge's Court, Medak at Sangareddy is the appellant, who was tried for an offence punishable u/s 302, IPC and found guilty, and, therefore, was convicted and sentenced to suffer imprisonment for life. The charge against the appellant is that on 26-3-1992 he was alleged to have caused the death of his wife Pochamalla Pentamma while she was sleeping by throwing a boulder on her head.

2. The prosecution case briefly stated is as follows :

The appellant was a resident of Kudambah village. The deceased was given in marriage to him seven or eight years prior to the occurrence. They lived at Bombay by begging and thereafter, they returned to Sadasivpet where the mother (PW3), sister and PW4, the brother of the deceased are residing. The deceased along with the appellant and their two children came to the house of PW2 for Sankranti festival and stayed there for a week. During that period the deceased complained to her mother and others that the accused used to beat her suspecting her character. After the festival, the deceased, her children and PW2 went to Bilalpur where the accused put up a residence with the deceased and his

children. PW2 advised them to maintain cordial relations, stayed there for three days and returned to sadasivpet. On the date of offence, PW8 the son of the deceased saw the accused beating the deceased on the head with a stone and tying the neck of the deceased with a ribbon and killing her. When he cried, the accused threatened him not to cry and took him outside and later took him away.

3. On 26-3-1992, PW2 again went to Bilalpur in the evening and found the doors of the house of the accused closed by bolting outside without locking. She also found some foul smell coming from the house. She went to the Sarpanch of the village and the village servant and informed them. They came and opened the door and found the dead body of the deceased. They have seen the head injury on the deceased and also a nylon ribbon tied to her neck. Pieces of red soil rock were also found near the dead body.

4. PW1, the village Administrative Officer gave Ex. P1 report on 27-3-1992 to the PW10, Head Constable of Kohir Police Station who registered it as a case in crime No. 39/92 u/s 302, IPC and issued Ex. P5 FIR to the Court. PW11, the Inspector of Police, Zaheerabad, took up the investigation. He conducted panchanama in the presence of PW7 under Ex. P2. He has also prepared a rough sketch under Ex. P12 and seized MOs. 1 to 4. He also held inquest over the dead body of the deceased in the presence of PW7, under Ex. P3. PW9 the Civil Assistant Surgeon, Government Hospital, Zaheerabad, conducted autopsy over the dead body of the deceased at 5.30 P.M. on 28-3-1992 and found four abrasions and one lacerated injury. Ex. P4 is the post mortem certificate. According to PW9 the death was due to haemorrhage and shock due to multiple injuries over the skull. On 14-6-1992, PW11 arrested the accused and file the charge sheet.

5. The prosecution examined in all 11 witnesses and marked Exs. P1 to P13; while none was examined on behalf of the appellant. The learned Additional Sessions Judge relying on the evidence of PW8 and the medical evidence, believed the prosecution case and convicted the appellant u/s 235(2), Cr.P.C. for the offence punishable u/s 302, IPC and sentenced him to suffer rigorous imprisonment for life. Aggrieved by the said conviction and sentence, this appeal.

6. Shri C. Padmanabha Reddy, the learned Senior Advocate appearing for the appellant contends that the charge as framed against the appellant shows that the appellant killed the deceased in the night of 26-3-1992 which is highly improbable. PW2 the mother of the deceased states that she had visited the house of the deceased on 26-3-1992 at 8.00 P.M., and by that time some foul smell was emanating. She informed the Sarpanch and others who went and saw the dead body. Therefore, the death could not have occurred on the night of 26-3-1992, but much earlier, because foul smell was emanating even by 8.00 P.M., on that day. He also draws support for his contention from the medical evidence of PW9, who stated that the death must have been caused more than 65 hours prior to the autopsy. The autopsy was conducted on 28-3-1992 at 5.30 P.M., Therefore, he contends that the charge as framed cannot be accepted. The learned Public Prosecutor relying on Section 215, Cr.P.C. contends that unless

there is prejudice caused to the accused a mere omission or mistake in the charge cannot be a ground to throw out the prosecution case. As the charge contains all the material particulars like the place of offence, name of the accused, and the manner in which the offence was committed etc., We are of the opinion that a mere mistake about the date of occurrence cannot prejudice the accused as all the relevant particulars are furnished in the charge sheet. Therefore, we are unable to accept this contention.

7. The next contention raised by the learned Senior Advocate, is that as the offence is alleged to have taken place during night time, the deceased as well as PW8 must be sleeping and PW8 who is aged 6 years at the time of occurrence, would not have seen the occurrence and at any rate, the solitary testimony of a child witness like PW8 is highly unsafe to be relied on as he is highly amenable for tutoring. He relied on a decision of this Court reported in *Re Dake Abbayi*, ILR 1956 AP 203. In this decision, a Division Bench of this Court has approved the observations of the Division Bench made in *Jalwanti Lodhin Vs. The State*, to the effect that "Children in the age group of about seven, are in a stage of maturation and they are creatures of emotion and action". The Division Bench has also accepted the view of Dr. Hans Cross when he says that if a child which hears some conversation, it is engraved deeply on its own mind, and ultimately, the child believes it as if it has seen what the others have related. Therefore, the evidence of a child witness is most unsafe to be relied on.

8. The learned Senior Advocate for the appellant also relied on a recent judgment of the Supreme Court reported in *Chhagandame v. State of Gujarat*, 1955 SCC 182. The Supreme Court considered the probative value of the evidence of a child witness. In the said case the witness, aged about 8 to 10 years, has admitted that the policeman told her to state only whatever she had seen, and she had to give her evidence according to her statement already recorded. Therefore, in view of these circumstances, the Court has observed that it is not safe to rely upon the evidence of such a witness. In this case, PW8 was only aged 6 years at the time of occurrence. He was examined after a lapse of more than two months. Even the evidence of PW8 does not inspire confidence. After the arrest of the appellant, PW8 came to the custody of PW2 his grand mother. Therefore, the possibility of tutoring either by PW2 or by police is not ruled out. Further more, he has also admitted that the police constable who is present in the Court told him to speak as stated in the Court that day and two other times previously. This also shows that the boy was not giving evidence independently uninfluenced by others, particularly, the police. On a reading of the evidence of PW8, it is clear that he did not give full particulars regarding what had happened on the fateful night, except stating that the deceased was hit with a stone and the appellant had tied the neck of the deceased with a thread and killed her. For all these reasons, we are unable to rule out tutoring of the witness. Therefore, there is a grave doubt about PW8 witnessing the occurrence. Barring the evidence of PW8, the other evidence is not sufficient to establish the complicity of the appellant.

9. However, the learned additional Public Prosecutor has contended that the evidence of PW8, who is no other than the son of the appellant, cannot be brushed aside and that the appellant was last seen in the company of the deceased and the conduct of the appellant in absconding for more than two months, even without giving a complaint clearly establishes the guilt of the appellant. No doubt, this circumstance throws any amount of suspicion of the appellant, but we are afraid, in the absence of any proof, the conviction cannot be sustained on the basis of mere suspicion. In this case the evidence of the child witness cannot be relied for the reasons stated above. It was also not established that the accused was last seen in the company of the deceased even on the fateful day. PWs 5 and 6 who are neighbours, no doubt, stated that the appellant and the deceased lived there for three days. According to PW5 after three days, PW2 came there and he saw her crying near the house of the appellant, and so himself and some others visited the house of the appellant and found some foul smell emanating from the house. He does not even say when he saw the appellant last in the company of the deceased. Even PW6 though stated that the accused disappeared on Wednesday, even assuming that the alleged offence took place on Wednesday as PW2 came there on Thursday, this evidence also does not show that the appellant was in the house with the deceased till evening. Till what time on Wednesday, the appellant was seen, was not stated by PW6. Therefore, on the basis of this evidence of PWs. 5 and 6 it cannot be concluded that the appellant was in the company of the deceased till the occurrence. Therefore, we cannot accept the submission of the learned Additional Public Prosecutor that the prosecution has established the guilt of the accused beyond all reasonable doubt. Hence, we are unable to agree with the learned Additional Session Judge that the prosecution has been able to bring home the guilt of the accused. Giving benefit of doubt, we allow the appeal and set aside the conviction and sentence imposed on the appellant. The appellant, is, therefore, acquitted of the charge, and he is set at liberty, if he is not required in any other case.

10. The Criminal appeal is accordingly allowed.

11. Appeal allowed.